



भारत का राजपत्र

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नई दिल्ली, जुलाई 8—जुलाई 14, 2007, शनिवार/आषाढ़ 17—आषाढ़ 23, 1929
NEW DELHI, JULY 8—JULY 14, 2007, SATURDAY/ASADHA 17—ASADHA 23, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सार्वजनिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 28 जून, 2007

का.आ. 1969.—सार्वजनिक स्थान (अनधिकृत अधिभोगियों की वेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा गृह मंत्रालय, भारत सरकार की दिनांक 17 जनवरी, 2004 की अधिसूचना सं. का.आ. 88 का अधिक्रमण करते हुए, ऐसे अधिक्रमण से पूर्व की गई अथवा किए जाने हेतु लोप की गई बातों को छोड़कर, केन्द्र सरकार एतद्वारा नीचे सारणी के कालम (1) में उल्लिखित अधिकारी को भारत सरकार के राजपत्रित अधिकारी के स्तर के समकक्ष अधिकारी होने के नाते, उक्त अधिनियम के प्रयोजनार्थ सम्मदा अधिकारी नियुक्त करती है, जो उक्त सारणी के कालम (2) में विनिर्दिष्ट सार्वजनिक परिसरों के क्षेत्राधिकार की स्थानीय सीमाओं के अंदर उक्त अधिनियम के द्वारा या उसके अन्तर्गत सम्मदा अधिकारी को प्रदत्त शक्तियों का प्रयोग करेगा और सौंपे गए कर्तव्यों का निर्वहन करेगा :

सारणी	
अधिकारी का पदनाम	सार्वजनिक परिसरों की श्रेणी तथा क्षेत्राधिकार की स्थानीय सीमा
(1)	(2)
अपर पुलिस उप महानिरीक्षक, गृष्म केन्द्र, केन्द्रीय रिजर्व पुलिस बल, अगरतला (त्रिपुरा)।	अदरिनी टी एस्टेट, अगरतला तथा ऊषा बाजार परिसर, अगरतला (त्रिपुरा) स्थित केन्द्रीय रिजर्व पुलिस बल की भूमि एवं परिसंपत्तियों के परिसर।

[फा. सं. ए-II-3/2006-प्रशा. I(एजीटी)-एमएचए-पीएफ. III]
एच. काम सुआनथांग, अवर सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 28th June, 2007

S.O. 1969.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), and in supersession of

the notification of the Government of India in the Ministry of Home Affairs number S.O. 88, dated the 17th January, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officer mentioned in column (1) of the table below, being an officer equivalent to the rank of Gazetted Officer of Government, to be Estate Officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on the Estate Officer by or under the said Act, within the local limits of the jurisdiction in respect of public premises specified in column (2) of the said table :

TABLE

Designation of the Officer	Categories of public premises and local limits of jurisdiction
(1)	(2)
Additional Deputy Inspector General of Police, Group Centre, Central Reserve Police Force, Agartala (Tripura).	Premises of land and assets belonging to the Central Reserve Police Force at Adarini Tea Estate, Agartala and Usha Bazar Complex, Agartala (Tripura)

[F. No. A-II-3/2006-Adm.-I(AGT)-MHA-PF. III]

H. KAM SUANTHANG, Under Secy.

वित्त मंत्रालय

(व्यव विभाग)

नई दिल्ली, 27 अप्रैल, 2007

का.आ. 1970.—राष्ट्रपति संविधान के अनुच्छेद 77 के खण्ड (3) के अनुसरण में एतद्वारा वित्तीय शक्तियों का प्रत्यायोजन नियमावली, 1978 में आगे और संशोधन करने के लिए निम्नवत नियम बनाते हैं :—

1. (1) इन नियमों को वित्तीय शक्तियों का प्रत्यायोजन (संशोधन) नियमावली, 2007 कहा जाएगा।

(2) ये नियम सरकारी राजपत्र में अपने प्रकाशन की तारीख से लागू होंगे।

2. “प्रत्येक मामले में बट्टे खाते डालने वाले घाटे की मौद्रिक सीमा” शीर्ष के तहत कालम 3 में “राजस्व घाटे” की मद के सामने वित्तीय शक्तियों का प्रत्यायोजन नियमावली, 1978 की अनुसूची VII में “15 लाख रुपए तक” के शब्दों, अक्षरों तथा आंकड़ों के स्थान पर “25 लाख रुपए तक” पढ़ा जाए।

[फा. सं. 1(1)/संस्थापना. II(ए)/2007]

आर. एस. आर. मूर्ति, अवर सचिव

नोट : दिनांक 22 जुलाई, 1978 के का.आ. संख्या 2131 के तहत प्रकाशित तथा वित्तीय शक्तियों का प्रत्यायोजन नियमावली, 1978 और उसमें हुए अनुवर्ती संशोधन इस प्रकार हैं :—

- (i) अधिसूचना सं. का.आ. 1187 दिनांक 9-6-1979
- (ii) अधिसूचना सं. का.आ. 2942 दिनांक 1-9-1979
- (iii) अधिसूचना सं. का.आ. 2611 दिनांक 4-10-1980
- (iv) अधिसूचना सं. का.आ. 2164 दिनांक 5-8-1981
- (v) अधिसूचना सं. का.आ. 2304 दिनांक 5-9-1981
- (vi) अधिसूचना सं. का.आ. 3073 दिनांक 4-9-1982
- (vii) अधिसूचना सं. का.आ. 4171 दिनांक 11-12-1982
- (viii) अधिसूचना सं. का.आ. 1314 दिनांक 26-2-1983
- (ix) अधिसूचना सं. का.आ. 2502 दिनांक 4-8-1984
- (x) अधिसूचना सं. का.आ. 22 दिनांक 5-1-1985
- (xi) अधिसूचना सं. का.आ. 1958 दिनांक 11-5-1985
- (xii) अधिसूचना सं. का.आ. 3082 दिनांक 6-7-1985
- (xiii) अधिसूचना सं. का.आ. 3974 दिनांक 24-8-1985
- (xiv) अधिसूचना सं. का.आ. 5641 दिनांक 21-12-1985
- (xv) अधिसूचना सं. का.आ. 1548 दिनांक 19-4-1986
- (xvi) अधिसूचना सं. का.आ. 3183 दिनांक 20-9-1986
- (xvii) अधिसूचना सं. का.आ. 3787 दिनांक 8-11-1986
- (xviii) अधिसूचना सं. का.आ. 2508 दिनांक 19-9-1987
- (xix) अधिसूचना सं. का.आ. 3092 दिनांक 7-11-1987
- (xx) अधिसूचना सं. का.आ. 3581 दिनांक 10-12-1988
- (xxi) अधिसूचना सं. का.आ. 641 दिनांक 17-3-1990
- (xxii) अधिसूचना सं. का.आ. 1469 दिनांक 26-5-1990
- (xxiii) अधिसूचना सं. का.आ. 2173 दिनांक 18-8-1990
- (xxiv) अधिसूचना सं. का.आ. 3033 दिनांक 17-11-1990
- (xxv) अधिसूचना सं. का.आ. 3414 दिनांक 22-12-1990
- (xxvi) अधिसूचना सं. का.आ. 534 दिनांक 28-2-1991
- (xxvii) अधिसूचना सं. का.आ. 2235 दिनांक 24-8-1991
- (xxviii) अधिसूचना सं. का.आ. 547(अ.) दिनांक 24-7-1992
- (xxix) अधिसूचना सं. का.आ. 466 दिनांक 13-3-1993
- (xxx) अधिसूचना सं. का.आ. 1292 दिनांक 12-6-1993
- (xxxx) अधिसूचना सं. का.आ. 685 दिनांक 12-3-1994
- (xxxxi) अधिसूचना सं. का.आ. 1232 दिनांक 28-5-1994
- (xxxxii) अधिसूचना सं. का.आ. 1945 दिनांक 13-8-1994
- (xxxxiii) अधिसूचना सं. का.आ. 2451 दिनांक 24-9-1994
- (xxxxiv) अधिसूचना सं. का.आ. 174 दिनांक 28-1-1995
- (xxxxv) अधिसूचना सं. का.आ. 670(अ.) दिनांक 30-9-1996
- (xxxxvi) अधिसूचना सं. का.आ. 665(अ.) दिनांक 5-8-1998
- (xxxxvii) अधिसूचना सं. का.आ. 1835 दिनांक 19-9-1998
- (xxxxviii) अधिसूचना सं. का.आ. 2274 दिनांक 14-8-1999
- (xxxxix) अधिसूचना सं. का.आ. 3054 दिनांक 23-10-1999
- (xxxxxi) अधिसूचना सं. का.आ. 2946 दिनांक 3-11-2001
- (xxxxxi) अधिसूचना सं. का.आ. 3661 दिनांक 23-11-2002
- (xxxxxi) अधिसूचना सं. का.आ. दिनांक

**MINISTRY OF FINANCE
(Department of Expenditure)**

New Delhi, the 27th April, 2007

S.O. 1970.—In pursuance of clause (3) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Delegation of Financial Powers Rules, 1978, namely :—

1. (1) These rules be called the Delegation of Financial Powers (Amendment) Rules, 2007.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In Schedule VII of the Delegation of Financial Powers Rules, 1978, against item "Loss of Revenue", in Column 3, under the heading "Monetary limit up to which the loss may be written off in each case", for the words, letters and figures "Upto Rs. 15 lakhs", the words, letters and figures "Upto Rs. 25 lakhs", shall be substituted.

[F. No. 1(1)/E.II(A)/2007]

R. S. R. MURTHY, Under Secy.

Note : The Delegation of Financial Powers Rules, 1978 published vide S.O. No. 2131 dated the 22nd July, 1978 and have subsequently been amended vide :—

- (i) Notification No. S.O. 1187 dated 9-6-1979
- (ii) Notification No. S.O. 2942 dated 1-9-1979
- (iii) Notification No. S.O. 2611 dated 4-10-1980
- (iv) Notification No. S.O. 2164 dated 15-8-1981
- (v) Notification No. S.O. 2304 dated 5-9-1981
- (vi) Notification No. S.O. 3073 dated 4-9-1982
- (vii) Notification No. S.O. 4171 dated 11-12-1982
- (viii) Notification No. S.O. 1314 dated 26-2-1983
- (ix) Notification No. S.O. 2502 dated 4-8-1984
- (x) Notification No. S.O. 22 dated 5-1-1985
- (xi) Notification No. S.O. 1958 dated 11-5-1985
- (xii) Notification No. S.O. 3082 dated 6-7-1985
- (xiii) Notification No. S.O. 3974 dated 24-8-1985
- (xiv) Notification No. S.O. 5641 dated 21-12-1985
- (xv) Notification No. S.O. 1548 dated 19-4-1986
- (xvi) Notification No. S.O. 3183 dated 20-9-1986
- (xvii) Notification No. S.O. 3787 dated 8-11-1986
- (xviii) Notification No. S.O. 2508 dated 19-9-1987
- (xix) Notification No. S.O. 3092 dated 7-11-1987
- (xx) Notification No. S.O. 3581 dated 10-12-1988
- (xxi) Notification No. S.O. 641 dated 17-3-1990
- (xxii) Notification No. S.O. 1469 dated 26-5-1990
- (xxiii) Notification No. S.O. 2173 dated 18-8-1990
- (xxiv) Notification No. S.O. 3033 dated 17-11-1990
- (xxv) Notification No. S.O. 3414 dated 22-12-1990
- (xxvi) Notification No. S.O. 534 dated 28-2-1991
- (xxvii) Notification No. S.O. 2235 dated 24-8-1991
- (xxviii) Notification No. S.O. 547(E) dated 24-7-1992
- (xxix) Notification No. S.O. 466 dated 13-3-1993

- (xxx) Notification No. S.O. 1292 dated 12-6-1993
- (xxxi) Notification No. S.O. 685 dated 12-3-1994
- (xxxii) Notification No. S.O. 1232 dated 28-5-1994
- (xxxiii) Notification No. S.O. 1945 dated 13-8-1994
- (xxxiv) Notification No. S.O. 2451 dated 24-9-1994
- (xxxv) Notification No. S.O. 174 dated 28-1-1995
- (xxxvi) Notification No. S.O. 670(E) dated 30-9-1996
- (xxxvii) Notification No. S.O. 665(E) dated 5-8-1998
- (xxxviii) Notification No. S.O. 1835 dated 19-9-1998
- (xxxix) Notification No. S.O. 2274 dated 14-8-1999
- (xxxx) Notification No. S.O. 3054 dated 23-10-1999
- (xxxxi) Notification No. S.O. 2946 dated 3-11-2001
- (xxxxii) Notification No. S.O. 3661 dated 23-11-2002
- (xxxxiii) Notification No. S.O. dated

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 5 जुलाई, 2007

का.आ. 1971.—भारतीय स्टेट बैंक (अनुषंगी बैंक)

अधिनियम, 1959 की धारा 25 की उपधारा (1) के खंड (ङ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री सर्वेश कुमार, अवर सचिव, वित्त मंत्रालय, वित्तीय सेवाएं विभाग, नई दिल्ली को तत्काल प्रभाव से और अगला आदेश होने तक श्री अतानु चक्रवर्ती के स्थान पर स्टेट बैंक आफ सौराष्ट्र के निदेशक मंडल में निदेशक के रूप में नामित करती है।

[फा. सं. 9/7/2007-बीओ-I]

जी. बी. सिंह, उप सचिव

(Department of Financial Services)

New Delhi, the 5th July, 2007

S.O. 1971.—In exercise of the powers conferred by clause (e) of sub-section (1) of Section 25 of the State Bank of India (Subsidiary Banks) Act, 1959 the Central Government, hereby nominates Shri Sarvesh Kumar, Under Secretary, Ministry of Finance, Department of Economic Affairs, Banking Division, New Delhi as a Director on the Board of Directors of State Bank of Saurashtra with immediate effect and until further orders vice Shri Atanu Chakravarti.

[F. No. 9/7/2007-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 5 जुलाई, 2007

का.आ. 1972.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध)

स्कीम, 1970/1980 के खंड 3 के उपखंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा नीचे दी गई सारणी के कालम (2) में विनिर्दिष्ट व्यक्तियों को उक्त सारणी के कालम (3) में विनिर्दिष्ट व्यक्तियों के स्थान पर इसके कालम (1) में विनिर्दिष्ट बैंकों के निदेशक के रूप में तत्काल प्रभाव से और अगला आदेश होने तक नामित करती है :—

सारणी		
बैंक का नाम	प्रस्तावित व्यक्ति का नाम विद्यमान निदेशकों के नाम	
(1)	(2)	(3)
बैंक आफ इंडिया	श्री तरुण बजाज, निदेशक (एसी एवं आईएफ), वित्त मंत्रालय, वित्तीय सेवाएं विभाग, जीवन दीप भवन, नई दिल्ली ।	श्री सुदेश कुमार
बैंक आफ महाराष्ट्र	श्रीमती सुकृति लिखी, उप सचिव (आरआरबी एवं सोपी), वित्त मंत्रालय, वित्तीय सेवाएं विभाग, जीवन दीप भवन, नई दिल्ली ।	श्री तरुण बजाज

[फा. सं. 9/7/2007-बीओ-I]

जी. बी. सिंह, उप सचिव

New Delhi, the 5th July, 2007

S.O. 1972.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominate the persons specified in column 2 of the Table below as Directors of the Banks specified in column 1 thereof in place of the persons specified in column 3 of the said Table, with immediate effect and until further orders :—

TABLE

Name of Bank	Name of proposed person	Name of present Directors
(1)	(2)	(3)
Bank of India	Shri Tarun Bajaj, Director (AC & IF), Ministry of Finance, Banking Division, Jeevan Deep Building, New Delhi.	Shri Sudesh Kumar
Bank of Maharashtra	Mrs. Sukriti Likhi, Deputy Secretary, (RRB & CP) Ministry of Finance, Banking Division, Jeevan Deep Building, New Delhi.	Shri Tarun Bajaj

[F. No. 9/7/2007-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 9 जुलाई, 2007

का.आ. 1973.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा, भारतीय रिजर्व बैंक से परामर्श करके निम्नलिखित दो व्यक्तियों को, इस अधिसूचना की तारीख से 3 वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो भारतीय स्टेट बैंक के केन्द्रीय निदेशक मंडल में अंशकालिक गैर-सरकारी निदेशकों के रूप में नामित करती हैः—

- (i) डा. देवानन्द बलोधी,
ई-200, ईस्ट विनोद नगर,
नई दिल्ली-110091
- (ii) प्रो. सलाहुद्दीन अंसारी,
प्रोफेसर एवं डीन, वाणिज्य संकाय,
एस.के.एम. विश्वविद्यालय, डुमका।

[फा. सं. 8/4/2004-बीओ-I]

जी. बी. सिंह, उप सचिव

New Delhi, the 9th July, 2007

S.O. 1973.—In exercise of the powers conferred by clause (d) of Section 19 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank of India hereby nominates the following two persons as part time non-official directors on the Central Board of Directors of State Bank of India for a period of three years with effect from the date of notification or until further orders, whichever is earlier:—

- (i) Dr. Deva Nand Balodhi
E-200, East Vinod Nagar,
New Delhi-110091
- (ii) Prof. Salahuddin Ansari,
Professor & Dean Faculty of Commerce
S.K.M. University, Dumka

[F.No. 8/4/2004-B.O.-I]

G. B. SINGH, Dy. Secy.

उपरोक्ता मामले, खाता और सार्वजनिक वितरण मंत्रालय

(उपरोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 4 जुलाई, 2007

का.आ. 1974.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में एतद्वारा अधिसूचित किया जाता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं और वापस लिये गये हैं:—

अनुसूची

क्रम सं.	रद्द किये गये मानक को संख्या और वर्ष	भारत के राजपत्र भाग II, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि प्रकाशित	(1)	(2)	(3)	(4)
1.	आईएस 3107:1974	जुलाई 2007	—			
2.	आईएस 11599: 1986	जुलाई 2007	—			
3.	आईएस 12784 (भाग 1) 1989	जुलाई 2007	—			

[संदर्भ : ईटीडी/जी-63(ए)]

पी. के. मुखर्जी, वैज्ञा. एफ एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 4th July, 2007

S.O. 1974.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is, hereby notified that the Indian Standards, Particulars of which are mentioned in the Schedule given hereafter, have been cancelled and standard withdrawn.

SCHEDULE

SL No.	No. & year of the Indian Standards Cancelled	S.O. No. & Date published in the Gazette of India, Part-II, Section-3, Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1.	IS 3107:1974	July 2007	—
2.	IS 11599:1986	July 2007	—
3.	IS 12784 (Part 1) 1989	July 2007	—

[Ref.: ETD/G-63(A)]

P. K. MUKHERJEE, Sc. F. & Head (Electrotechnical)

नई दिल्ली, 5 जुलाई, 2007

का.आ. 1975.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

अनुसूची

मई, 2007 में रद्द किये गये अनुज्ञित				
क्र. सं.	लाइसेंस संख्या	लाइसेंसधारी का नाम	लाइसेंस के अंतर्गत भारतीय मानक का शीर्षक	रद्द/स्थगित करने की तिथि
1.	7268582	रोड टैक इक्यूप्रैमेंट प्रा. लि., 213, जीआईडीसी, फेस 1, मेहसाना-384 002	डीपैकल हैंडपम्प कम्पोनेंट स्टेनलैस स्टील 14105 : 1994	17-05-2007
2.	7687909	मानव विधरेज, 166 से 169, कृष्णा एस्टेट, बी आई डी सी के सामने, गोरवा, वडोदरा	पैकेजिंग पेयजल 14543 : 2004	01-05-2007

[सं. सीएमडी 13 : 13]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 5th July, 2007

S.O. 1975.— In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each.

SCHEDULE

Cancelled licence for the month of May 2007

SL No.	Licence No.	Name and address of the licensee	Article/process with relevant Indian Standard covered by the licensee	Date of cancellation
1.	7268582	Road Tech. Equipments P. Ltd., 213, G I D C, Phase-1 Mehsana-384 002	Deepwell Hand-pumps Components Stainless Steel IS 14105 : 1994	17-05-2007
2.	7687909	Manav Beverages, 166 to 169, Krishna Estate, Opp. BIDC, Gorwa, Vadodara.	Packaged Drink-ing Water IS 14543 : 2004	01-05-2007

[No. CMD/13 : 13]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 5 जुलाई, 2007

का.आ. 1976.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस सं.	वैद्यता तिथि	पार्टी का नाम एवं पता (कारखाना)	उत्पाद	आई एस सं./भाग/खण्ड वर्ष
(1)	(2)	(3)	(4)	(5)	(6)
1.	7744083	22-05-2008	ऋभ अप्लाइड मिटर्स प्रा. लि., सी-6 त्रिशला यूनिट, एन आई सी इंडस्ट्रियल एरिया, एम आई डी सी सी, सातपुर, नाशिक-422 007	ऐसी स्थैतिक वाट घंटा मीटर वर्ग 1 और 2	13779 : 1999
2.	7746794	30-05-2008	एस आर एन्टरप्राइजेस, जी आर-1, ए विंग, संभव दर्शन, हेमूकलाली मेन रोड, कार्दिवली (पश्चिम), मुंबई-400 067	बिजली के घरेलू खाद्य मिक्सर (द्रवीपरक और ग्राइंडर)	4250 : 1980
3.	7738694	10-05-2008	विमल अप्लायंसेस, ई-46, स्पैन इंडस्ट्रियल कॉम्प्लेक्स, सिल्वासा रोड, दादरा, (संघ राज्य क्षेत्र), दादरा और नागर हवेली	बिजली के घरेलू खाद्य मिक्सर, (द्रवीपरक और ग्राइंडर)	4250 : 1980
4.	7741380	16-05-2008	आयुष होम अप्लायंसेस, 1, वाडिया इस्टेट, बिल्डिंग नं-16 के सामने, बेल बझार, पुराना कुर्ला, मुंबई-400 070	बिजली के घरेलू खाद्य मिक्सर (द्रवीपरक और ग्राइंडर)	4250 : 1980
5.	7743990	22-05-2008	तिरुपति बालाजी एंड क., प्लॉट नं. 227/2/2, भिवंडी - वाडा रोड, खुपारी गांव, वाडा, ठाणे-421 312	1100 वो. तक कार्यकारी वोल्टता के लिए पीवीसी रोधित (हैवीड्यूटी) विद्युत केवल (मांग 1)	1554 : (मांग 1): 1988

[संख्या केन्द्रीय प्रमाणन विभाग/ 13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 5th July, 2007

S.O. 1976.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	IS No./Part/Sec. Year
(1)	(2)	(3)	(4)	(5)	(6)
1.	7744083	22-5-2008	Rishab Applied Meters Pvt. Ltd., C-6 Trishala Unit, Nice Indl. Area, M.I.D.C., Nashik, Satpur-422007	ac Static Watt-hour Meters, Class 1 and 2—Specification	13779 : 1999

1	2	3	4	5	6
2.	7746794	30-05-2008	S.R. Enterprises, GR-1, A-Wing, Sambhav Darshan, Hemukalani Main Rd., Kandivli (W), Mumbai-400067	Specification for Domestic Electric Food-Mixers (Liquidizes and Grinders)	4250:1980
3.	7738694	10-05-2008	Vimal Appliances, E-46, Span Industrial Complex, Dadra, Silvassa Road, Dadra and Nagar Haveli Dadra (UT)	Specification for Domestic Electric Food-Mixers (Liquidizes and Grinders)	4250:1980
4.	7741380	16-05-2008	M/s. Ayush Home Appliances, 1, Wadia Estate, Opp. Building No. 16 Bail Bazar, Old Kurla, Mumbai-400070	Specification for Domestic Electric Food-Mixers (Liquidizes and Grinders)	4250:1980
5.	7743990	22-05-2008	Tirupati Balaji & Co. Plot No. 227/2/2, Bhiwandiwala Rd., Village Khupari, Wada, Thane-421312	PVC insulated (heavy duty) electric cables : Part 1 For working voltages upto and including 1100 V.	1554 : Part 1 : 1988

[No. CMD/13:11]
A. K. TALWAR, DDGM.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 2 जुलाई, 2007

का.आ. 1977.—केन्द्रीय सरकार, निर्यात (व्यावालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (व्यावालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स क्लेब ब्रेट इंडिया प्राइवेट लिमिटेड, सं. 46, वेस्ट मधाचर्च रोड, दूसरा तल, रोयापुरम, चैनाई-600013 को राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए वाणिज्य मंत्रालय की अधिसूचना क्रमशः सं. का.आ. 3975 और का.आ. 3978, दोनों तारीख 20 दिसम्बर, 1965 से रापाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क अर्थात् लोह अयस्क और मैग्नीज अयस्क समूह-I तथा बाराइट्स फेल्डस्पर और ब्यार्ट्ज समूह-II के निर्यात से पूर्व खनिजों और अयस्कों का निरीक्षण करने के लिए निम्नलिखित शर्तों के अधीन चैनाई में एक अभिकरण के रूप में मान्यता देती है, अर्थात्:-

- (i) मैसर्स क्लेब ब्रेट इंडिया प्राइवेट लिमिटेड, चैनाई खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क ग्रुप-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का प्रभाण-पत्र देने के लिए उनके द्वारा अपनाई गई पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिरेंशित अधिकारियों को पर्याप्त सुविधाएं देगी।
- (ii) मैसर्स क्लेब ब्रेट इंडिया प्राइवेट लिमिटेड, चैनाई इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक

(निरीक्षण और व्यावालिटी नियंत्रण), निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित में दिए गए निदेशों से आबद्ध होंगे।

[फाइल सं. 5/5/2007-ईआई एंड ईपी]

वी. के. गाबा, उपसचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 2nd July, 2007

S.O. 1977.—In exercise of the powers conferred by the sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), and in pursuance of sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises, M/s Caleb Brett India Private Limited, No. 46 West Madha Church Road, 2nd Floor, Royapuram, Chennai-600013 for a period of three years from the date of publication of this notification as an agency for inspection of Minerals and Ores, namely, Iron Ore and Manganese Ore, Group-I and Barytes, Feldspar and Quartz, Group-II as specified in the Schedule annexed to the Notification in the Ministry of Commerce number S.O. 3975 and S.O. 3978 respectively both dated the 20th December, 1965, prior to export at Chennai, subject to the following conditions, namely:—

(i) that M/s Caleb Brett India Private Limited, Chennai shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores, Group I (Inspection) Rules, 1965 and the export of Minerals and Ores, Group II (Inspection) Rules, 1965;

(ii) that M/s Caleb Brett India Private Limited, Chennai in the performance of their function under this notification shall be bound by such directives as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[File No. 5/5/2007-EI & EP]

V. K. GAUBA, Dy. Secy.

नई दिल्ली, 2 जुलाई, 2007

का.आ. 1978.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, नं. 02-03, प्रथम तल, क्लासिक बिल्डिंग, रायकोन होटल के सामने, वास्को-दा-गामा, गोवा-403802 को राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए तत्कालीन वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 से उपबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-I अर्थात् लौह अयस्क और मैग्नीज अयस्क (मैग्नीज डाइऑक्साइड को छोड़कर) उक्त खनिजों और अयस्क के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन गोवा में, निरीक्षण करने के लिए एक अधिकारण के रूप में मान्यता प्रदान करती है, अर्थात्:-

- (क) यह कि मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, गोवा खनिज और अयस्क समूह-I (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का प्रमाण पत्र देने के लिए उनके द्वारा अपनाई गई पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद द्वारा नाम निर्देशित अधिकारियों को पर्याप्त सुविधाएं देगी,
- (ख) यह कि मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, गोवा इस अधिसूचना के अधीन अपने कृत्यों के अनुपालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) द्वारा समय-समय पर लिखित में दिए गए निर्देशों से आवद्ध होंगी।

[फाइल सं. 5/6/2007-ईआई एंड ईपी]

वी. के. गाबा, उपसचिव

New Delhi, the 2nd July, 2007

S.O. 1978.—In exercise of the powers conferred by the sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), and in pursuance of sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises, for a period of three years from the date of publication of this notification, M/s. Therapeutics Chemical Research Corporation, No. 02-03, First Floor, Classic Building Opp. Ricone Hotel, Vasco-Da-Gama, Goa-403 802. as an agency for inspection of Minerals and Ores, Group-I, namely, Iron Ore and Manganese Ore (excluding Manganese Dioxide), specified in the Schedule annexed to the Notification in the Ministry of Commerce

number S.O. 3975 dated 20th December, 1965, prior to export at Goa, subject to the following conditions, namely:—

(a) that M/s. Therapeutics Chemical Research Corporation, Goa shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores, Group I (Inspection) Rules, 1965

(b) that M/s. Therapeutics Chemical Research Corporation, Goa in the performance of their function under this notification shall be bound by such directives as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[File No. 5/6/2007-EI & EP]

V. K. GAUBA, Dy. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 12 जुलाई, 2007

का.आ. 1979.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 3026 दिनांक 26 अगस्त, 2005 द्वारा प्राधिकृत श्री के एस गोपी के स्थान पर श्री अशोक सुब्रह्मण्यम, प्रबंधक (इरुगूर), पेट्रोनेट सी सी के लिमिटेड को उक्त अधिनियम के अधीन, तमिलनाडु के राज्यक्षेत्र के भीतर पेट्रोनेट सी सी के लिमिटेड, की कोचिन-कोयंबतूर-करुर पाइपलाइन के सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है। श्री अशोक सुब्रह्मण्यम, सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के अलावा पाइपलाइन गतिविधियों से संबंधित कृत्यों का निर्वहन करते रहेंगे।

[फाइल सं. आर-31015/12/2003-ओ आर-II]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 12th July, 2007

S.O. 1979.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes Shri Asok Subrahmanyam, Terminal Manager (Irugur), Petronet CCK Limited to perform the functions of Competent Authority, Cochin-Coimbatore-Karur Pipeline of Petronet CCK Limited, under the said Act, within the territory of the State of Tamil Nadu, in place of Shri K.S. Gopi, authorized *vide* notification of the Government of India in the Ministry of Petroleum and Natural Gas, Number S.O. 3026 dated 26-8-2005. Shri Asok Subrahmanyam will be performing the functions of Competent Authority in addition to his other main duties of operation of the pipeline.

[File No. R-31015/12/2003-OR-II]

A. GOSWAMI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 जून, 2007

का.आ. 1980.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण मालबाबा ग्रामीण बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकूलम के पंचाट (संदर्भ संख्या 61/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2007 को प्राप्त हुआ था।

[सं. एल-12011/06/2004-आई.आर.(बी-1)]

अजय कुमार, डेर्स्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th June, 2007

S.O. 1980.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of South Malabar Gramin Bank and their workman which was received by the Central Government on 14-06-2007.

[No. L-12011/06/2004-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM

PRESENT

**Shri P.L. Norbert, B.A. LL.B.,
Presiding Officer**

(Wednesday the 30th day of May, 2007/9th Jyaistha,
1929)

I. D. 61/2006

(I.D. 29/2004 of Industrial Tribunal, Kozhikode)

Union	The General Secretary South Malabar Gramin Bank Staff Union Central Office, Bank Employees Bhavan Y.M.C.A. Road Kozhikode-673 001 Adv. Shri P. V. Lohithakshan
Management	The Chairman South Malabar Gramin Bank, Head Office, P.B. No. 10 Malappuram-676 505. Adv. Smt. I. Sheela Devi

AWARD

This is a reference made by Central Government under Section 10 (1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is :—

"Whether the action of the South Malabar Gramin Bank in providing pension in accordance with Employees's Provident Fund, since 1995 is correct or not & whether the employees of South Malabar Gramin Bank are eligible to draw pension in accordance with Bank Employees' Pension Regulation, 1995 in the backdrop of National Tribunal Award upheld by the Hon'ble Supreme Court of India and accepted by the Government of India ?"

2. The facts of the case in brief are as follows:

The union, South Malabar Gramin Bank Staff Union, has raised the dispute. The South Malabar Gramin Bank is a Regional Rural bank. It has 203 branches all over Kerala. It is under the supervision and control of a sponsor bank, Canara Bank, which is under the control of Reserve Bank of India. The service conditions of South Malabar Gramin Bank are decided by the sponsor bank. The union and the employees were demanding parity in pay and pension with those of the employees of sponsor bank. The union raised an industrial dispute and the matter was adjudicated by the National Industrial Tribunal and an award was passed. As per the award the employees of South Malabar Gramin Bank are entitled to parity in pay and allowances and other benefits with the employees of sponsor bank. The award was confirmed by the Hon'ble Supreme Court and accepted by Government of India as per notification dated 22.2.1991. Thereafter the Bank Employees (Pension) Regulations, 1993 came into force which was subsequently modified in 1995. The Bank Employees' Pension Scheme came into force in 1995 and it was implemented in all nationalised commercial and scheduled banks except Regional Rural Banks. The union contends that the non-implementation of the Bank Employees' Pension Scheme, 1995 is unjustified and illegal. As per Employees' Provident Fund and Miscellaneous Provisions Act, 1952 which is in force in Regional Rural Banks a meager sum is paid as pension.

3. According to the management the union which has raised the industrial dispute is an unrecognized union. The management is paying pension under EPF Act. The Act and Pension Scheme made thereunder are statutory. The management is bound to comply with the statutory provisions of the Act and Scheme and there is no escape from it. It is the EPF Organization which is granting pension to employees of the bank. It is for the Government to exempt the management from the operation of pension scheme under EPF Act (Para 39 of Employees' Pension Scheme, 1995). The Rural Regional Bank is governed by provisions of Regional Rural Banks Act, 1976. The

Government had constituted an Equation Committee to make recommendations regarding pay, allowances and other benefits in the light of the award of National Industrial Tribunal. The committee was of the opinion regarding contributions under provident fund that sponsor bank and sponsored bank are not governed by the same Act. Hence the pension scheme which is governing the sponsor bank cannot be made applicable to the sponsored bank. Unless the Government exempt Regional Rural Banks from the application of the provisions of EPF and Miscellaneous Provisions Act, 1952, the Employees' Pension Regulations, 1995 and the Scheme thereunder cannot be implemented in Regional Rural Banks. The management also contends that the award of National Industrial Tribunal is not applicable in respect of pension regulations which came into force after the award and after judgement of Hon'ble Supreme Court.

4. Evidence was adduced by both sides, which consists of oral testimony of WWI and documentary evidence of Exts. WI to W7 on the side of union and MWI and Exts. M1 to M3 on the side of management.

5. When the matter came up for hearing both sides admitted that adjudication of the dispute at this stage is not possible as the decision with regard to the Employees Pension Regulations, 1995 and the Scheme has to be taken by the Government. If the Government decides to implement the Pension Scheme of 1995 in Regional Rural Banks then exemption from the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 has to be given by the Government to Regional Rural Banks. Otherwise the management bank will have to pay double benefits under both pension schemes to the employees. It is also brought to the notice of this Court that there was a Writ Petition before Hon'ble High Court of Kerala as O.P.27811/99. The decision in that case was challenged before the Division Bench in Writ Appeal No.2149/2006. It was observed in the writ appeal that there was a representation before Government of India with regard to the implementation of Pension Scheme, 1995 and the eligibility of the Appellant in the appeal for pension under that scheme. The Hon'ble High Court therefore directed the Government to take a decision on the representation within a period of six months from the date of receipt of the judgement. Therefore both sides admit that the adjudication of the present reference is premature and the issue has to be decided by Government whether to implement the Employees Pension Regulation, 1995 and the Pension Scheme thereunder in Regional Rural Banks and whether it should be exempted from the operation of EPF and Miscellaneous Provisions Act, 1952.

6. In the light of the above submissions the reference is disposed off by passing an award finding that the dispute is premature for adjudication and parties will await the decision of the Government in the representation pending before the Government, however, without prejudice to the

right of the union to raise dispute, if any, after the decision of the Government. No Cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of May, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Union:

WWI —Shri Unnikrishnan—1-9-2005.

Witness for the Management:

MWI —Shri A.P. Narayanankutty—5-10-2005.

Exhibits for the Union :

- WI - Hand Book on Bank (Employees') Pension Regulations, 1995.
- W2 - 6th Bipartite Settlement dated 14-2-1995.
- W3 - 7th Bipartite Settlement dated 27-3-2000.
- W4 - 8th Bipartite Settlement dated 2-6-2005.
- W5 - National Industrial Tribunal's Award dated 30-4-1990.
- W6 - Judgement of Hon'ble Supreme Court reported in 2001 SOL Case No. 067.
- W7 - Judgement of Hon'ble Supreme Court reported in 2002 LABIC 1435.

Exhibits for the Management:

- M1 - Copy of Equation Committee Report on RRBs dated 8-1-1991.
- M2 - Copy of Working Group Report on RRBs.
- M3 - Copy of Order F.No. 7(5)/95-RRB dated 11-4-2001 of M/o Finance to the Chairman of RRBs.

नई दिल्ली, 15 जून, 2007

का.आ. 1981.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टैट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, नई दिल्ली के पंचाट (संदर्भ संख्या 30/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-06-2007 को प्राप्त हुआ था।

[सं. एल-12012/134/2005-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 15th June, 2007

S.O. 1981.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2006) of the Central Government Industrial-Tribunal-cum-Labour Court-II, New Delhi as shown in the Annexure in the

Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 15-06-2007.

[No. L-12012/134/2005-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

I.D. No. 30/2006

Presiding Officer : R. N. Rai

PRESENT

Sh. J.N. Kapoor	— 1st Party
Sh. Praveen Sharma	— 2nd Party

In the matter of :

Smt. Sudha Kapila, St. Staff Nurse,
C/o. Sh. J. N. Kapur, 33-34, Bank Enclave,
Ring Road, Rajouri Garden,
New Delhi - 110 027.

Versus

The Asstt. General Manager,
Office Admn. & Liaison Deptt.,
Dept. State Bank of India,
Local Head Office, 11,
Parliament Street,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-12012/134/2005-IR (B-I) Central Government Dt. 08-06-2006 has referred the following point for adjudication.

The point runs as hereunder :—

"Is the termination of services of Ms. Sudha Kapila from the management of State Bank of India w.e.f. 7-5-04 on the ground of unauthorized absence is just, fair and legal ? If not, then to what relief the workman is entitled to and from which date ?"

The workman applicant has filed claim statement. In the claim statement it has been stated that the workman is qualified Nurse. She was appointed by the State Bank of India as Staff Nurse for their staff Dispensary at New Delhi Local Head Office. That she was promoted as Senior Staff Nurse in the Bank.

That the work and conduct of the workman was good. She was, therefore, promoted as Senior Staff Nurse.

That for the last few years she was harassed by the management and forced to work as Clerk in other Department, which was neither her designation nor she was acquainted/experienced with clerical job of the Bank. This all was done to harass and victimize her.

That she had proceeded on leave for the reason beyond her control. She had been submitting applications in this regard to the management.

That the management had been discriminating her being a workman and harshly treating her. They did not consider her genuine requests whereas in similar circumstances of male staff, unauthorized absence was condoned.

That she had come all the way from abroad several times to join duty but she was not allowed to join the duty. That the workman was not even paid the wages for the period she attended duties despite repeated requests and representations.

That her increments were also not released, for malafide reasons and to harass and victimize her. That she was harassed, tortured & victimized. She submitted her resignation which was also not accepted for malafide reasons to punish her and cause stigma on her.

That to support her contentions referred to above the workman submits the copies of the following letters:

Letter dated 26-2-2004,—Marked Annex. 'A'

Addressed to Shri O.P. Yadav, Enquiry Officer.

- (ii) Letter dated 28-2-2004 addressed to the Asstt. General Manager — Marked Annex 'B'.
- (iii) Letter dated 25-8-2004 addressed to the Asstt. General Manager—Marked Annex.. 'C'.

That the workman was issued a charge sheet for unauthorized absence and the Management with preconceived mind directed to hold the enquiry through Shri O.P. Yadav, Enquiry Officer.

That the workman was serious to continue in her job therefore, she came all the way from abroad after spending huge amount and attended all the dates and co-operated the management in holding the enquiry quickly. She had not attended the enquiry to get her terminated. If she had not attended the enquiry the result would have been the same but at least she would have saved huge amount, which she had incurred for attending the enquiry. On the specific assurance of the management that lenient action will be taken and she will not lose the job, she co-operated and spent huge funds.

That the enquiry was a sham show. Neither original documents were provided nor proved through an oral witness. No oral evidence was produced by the Management to prove their case. The findings of the Enquiry Officer were perverse.

That on the basis of sham show enquiry and perverse findings, the Disciplinary Authority removed the workman from the Bank's service without giving any consideration of her long service.

That the workman submitted her appeal to the Appellate Authority against the decision of removal from

service by the Disciplinary Authority vide his letter dated 10-8-2004; the copy of which is enclosed Marked Annexure 'D'.

That the Appellate Authority vide its order dated 13-10-2004 i.e. after 63 days rejected the appeal without granting any personal hearing and without any judicious, cogent and valid reasons.

That as the action of the Management was illegal, malafide & amounted to unfair labour practice and victimization, therefore, the workman raised an industrial dispute with the Asstt. Labour Commissioner (Central) vide her letter dated 4-1-2005.

That the management took a rigid stand and did not agree to amicably settle the dispute, therefore, the conciliation proceedings ended into failure.

That the Govt. of India *vide* its Notification No. L-12012/134/2005-IR (B-1) dated 8-6-2006, referred the said dispute to your honour for adjudication with the following schedule (Reference).

"Is the termination of services of Ms. Sudha Kapila from the management of State Bank of India w.e.f. 7-5-2004, on the grounds of unauthorized absence is just, fair and legal ? If not, then to what relief the workman is entitled to and from which date ?"

That in the circumstances stated above the action of the management is unfair, unjustified, illegal, discriminatory and malafide and amounts to victimization of a lady employee. The punishment of termination is very very harsh, disproportionate, discriminatory and shocking. Therefore it should be set aside.

The Management has filed written statement. In the written statement it has been stated that there exists no dispute between the workman and the Management inasmuch as the workman has accepted her terminal dues from the Management by withdrawing her Provident Fund as well as Gratuity. This fact goes to show that the workman has accepted and admitted as correct the factum of termination of her services and therefore at this stage she cannot take a U-turn raise a dispute in respect of termination of her services by the Management. Therefore the claim of the workman deserves to be dismissed on this ground itself.

That without prejudice to the above it is submitted that the dispute raised by the workman herein is totally baseless, based upon misrepresentation of facts with a view to mislead this Hon'ble Court and it amounts to abuse and misuse of the process of law. The workman who was a habitual absentee and had been issued various memos in the past in connection with her unauthorized absence from duty. The workman was charge sheeted by the Management as w.e.f. 1-2-2001, not only she absented herself from duty without prior permission/sanction of leave, she even left the country and went to U.K. and then from there to USA. The workman failed to join her duty

despite being called upon to do so by the Management by writing her letters addressed to her UK, USA as well as local addresses. The workman committed a grave misconduct and now by raising the present dispute the workman is trying to take advantage of her own wrong and the dispute raised deserves to be dismissed without giving her any relief whatsoever. It is submitted that while remaining away from her duties in an unauthorized manner, the workman had enough time/resources to settle in UK and USA but no time to come back to India and join her duties. She made a mockery of her employment by remaining absent for years together. As she failed to join duty despite repeated letters sent to her by the Management, she was charge sheeted *vide* letter dated 11-3-2003 and a Domestic Inquiry was conducted by the Management in the matter of her unauthorized absence. The workman participated in the Inquiry and she was afforded full opportunity to rebut the charges leveled against her. On the basis of material produced before him, the Inquiry Officer submitted his report in the matter to the management and a Show-Cause notice dated 23-3-04 was issued to the workman. As she could furnish no satisfactory reply to the Management, *vide* letter dated 7-5-04 she was removed from service. The workman preferred an Appeal as well and a personal hearing was also granted to her. However she failed to furnish any valid grounds justifying withdrawal of the punishment imposed upon her and therefore the Appellate Authority did not accept her appeal.

The removal of the workman was legal and justified; proceeded by a fair and proper inquiry conducted in accordance with the principles of Natural Justice and the management relies upon the same. However if due to any reason the inquiry conducted by the management stands vitiated, the management relies upon the same. However if due to any reason the inquiry conducted by the management stands vitiated, the management seeks opportunity to prove the misconduct of the workman before this court.

The fact is that she was a habitual absentee and therefore her unauthorized absence was a cause of concern to the management. Between the period 23-7-86 to 23-8-99, she was unauthorisedly absent for a total of 511 days as below :

23-7-86 to 31-10-86	90 days
1-11-86 to 25-6-90	270 days
24-6-90 to 23-8-99	151 days

Due to frequent unauthorized absence of the workman even the date of her increment of the workman was extended from 10-1-90 to 26-9-90 and as the workman failed to mend her ways, a memo dated 22-5-2000 was issued to her calling upon her to join her duties immediately.

It is again denied that the workman was promoted to the post of Senior Staff Nurse due to her good work and conduct.

It is strongly denied that she was harassed by anyone in the management or that she was forced to work as a clerk in other department. The workman be put to strict proof of the allegations made by her in para under reply. As submitted in para 2 above, the designation of the workman was changed to Clerk and therefore she was made to do the clerical work. The workman was fully aware of this fact in various letters written by her to the management, she had been addressing herself as Assistant Clerk. The allegations of harassment/victimization leveled against the management have no substance and hence strongly denied.

It is denied that the workman proceeded on leave as stated in para under reply. The facts as already submitted in foregoing paras is that she simply left her office on 31-1-2001 without seeking any permission to leave the country or seeking leave from the management and did not even care to make an application for leave. Such a casual approach towards her work and duty speaks volumes about the seriousness of the workman towards her work as this was not the first time the workman has acted in such a manner. She was in the habit of simply absenting from her duty and sending applications as per her pleasure expecting the management to forget all rules of discipline and grant leave to her. It is denied that the workman proceeded on leave as alleged in para under reply.

It is denied that the management ever discriminated against the staff as alleged. It is denied that the management did not consider the genuine problems of any staff including the workman in this case. It is further submitted that even the unauthorized absence of the workman was condoned by the management but it appears that the workman did not take the gesture of the management in the right spirit and presumed that she had a legal right to absent again & again in an illegal manner and get it condoned by the management even at a cost of maintenance of discipline in the office.

It is submitted that the workman had gone outside India due to her personal reasons and if at all she came back to India she did not commit any favour to the management. It is denied that the workman was denied duty as alleged. It is submitted that vide letter-dated 31-1-04 the workman was allowed to join duty but due to the reasons best known to her, she failed to join her duties.

It is submitted that all the dues of the workman after adjusting the outstanding loans availed by the workman stand paid by the management against a receipt dated 19/21-2-05. At the request of the workman the dues were credited to her saving bank account no. 299152 maintained in Personal Banking Branch, New Delhi.

The workman herself committed major misconduct by remaining away from work in an unauthorized and illegal manner throwing all disciplinary norms to winds thereby causing disruption of work with the management and instead of realizing her mistakes; she is leveling baseless

and unfounded allegations against the management. The resignation of the workman was not accepted as disciplinary proceedings were pending against her.

The workman desires to state that by participating in the Inquiry, she did some favour to the management and further that as she "spent huge amount", therefore the management was under an obligation to exonerate the workman from all charges and allow her to continue to commit similar kinds of misconduct. It is submitted that had the workman been serious in continuing her job, she would have taken her employment more seriously and not indulged in the acts of remaining absent from duty unauthorized and that too on many occasions. Rather the past record of the workman displayed that she was least interested in her employment with the management and therefore never cared to do her duties faithfully.

It is submitted that the Management conducted a free and fair inquiry and the workman was given full opportunity to defend herself. The findings of the Inquiry Officer were based upon records and not perverse as alleged in para under reply. The management relies upon the record of the proceedings in support.

The workman was given opportunity to furnish a reply to show cause notice, file an appeal against the order of removal and a personal hearing was also granted to her. However as she could not produce any material in her defence, the decision to remove her from service was maintained by the management. It is denied that the Appellate Authority failed to apply his mind to the facts of the case of the workman or that no valid reasons were furnished for dismissal of the Appeal. The management relies upon the relevant documentary evidence in this regard.

The workman applicant has filed rejoinder. In her rejoinder she has reiterated the averments of her claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that the workman received telephonic call from her husband from U.K. There was none to lookafter him so she proceeded for U.K. on 31-01-2001 seeking leave w.e.f. 01-02-2001.

The management issued letter dated 14-02-2001 rejecting the application of the workman dated 31-01-2001 as no leave of workman was due and her absence was treated unauthorized. She was instructed to join duties immediately and submit her explanation for her unauthorized absence. The workman again wrote letter dated 24-05-2001 requesting leave up to 30-11-2001. She has annexed the letter of her Physician.

The management on 07-09-2001 intimated the workman that her absence has been treated as unauthorized so there is no question of extension of leave. She was again instructed to report immediately.

The management sent memorandum dated 11-03-2003 and instructed the workman to give reply within 7 days. The workman approached the management on 10-03-2003 for resuming her duty. In the letter dated 10-03-2003 it has been mentioned that the workman went to join duty on 25-11-2002 but she was refused duty. There is no application of 25-11-2002 on the record filed by the workman. Thereafter the management initiated disciplinary proceedings against the workman.

It was further submitted that the inquiry was not fairly conducted. The workman was not given opportunity to engage an Advocate to defend herself. Her designation was changed from Nurse to Clerk. The management wanted to harass her.

It was further submitted that Shri V.K. Chopra, Shri Piyush Soren, Smt. Kalpana & Shri V.K. Jain etc. were also absent but they were given minor punishment. Their increment was withheld whereas the management has inflicted the punishment of removal from service. The punishment is discriminatory, harsh and vindictive.

It was submitted from the side of the management that the workman was in the habit of remaining absent. She was absent for 511 days between the period 23-07-1986 to 23-08-1999 as under :

1. 23-07-86 to 31-10-86	— 90 Days
2. 01-11-86 to 25-06-90	— 270 Days
3. 24-06-90 to 23-08-99	—151 Days
Total	—511 Days

It was further submitted that the workman again absented unauthorisedly from 01-02-2001 and she reported on 10-03-2003. She remained for the entire period in U.K & U.S.A.

It was further submitted that the workman has taken the case that her husband was in U.K. and he was seriously ill so she proceeded for U.K on receiving information. No certificate regarding the illness of the husband of the workman has been filed on the record. An employee can proceed in case of emergency but there should be definite proof of that. The workman has not filed any certificate regarding serious illness of her husband and even sprain of her daughter.

The workman has submitted certificate regarding her own illness. The date of the certificate is 07-18-2001 of SCOTT & WHITE. It has been mentioned in the certificate as under:

"Patient is under medical treatment for the unknown time period. She will be seeing the specialist in October."

This certificate is forged and concocted. In medical certificate the period of illness is mentioned whereas it has been mentioned that she has been under treatment of the Dr. for unknown period. The certificate is dated 07-18-2001 which is itself a forged date. There is even no signature of the attending Doctor. It appears that the workman has prepared this certificate to show that she was ill for unknown period. This certificate is not reliable.

The workman has admitted in her cross-examination that she participated in the inquiry proceedings. She has engaged Shri P.K. Sharma as her Dr. She has not written any letter that she was willing to engage Mr. J.N. Kapoor as her Dr. She informed the Inquiry Officer that she insisted to engage P.K. Sharma as her Dr and Shri P.K. Sharma defended her. She was given time to produce her own evidence in defence. She has admitted in her cross-examination that she went to U.K. w.e.f. 01-02-2001 and from there she proceeded to USA as right leg of her daughter was sprained.

The management asked her to join duty provided she gives her undertaking WW/M2 that she would work regularly. She did not furnish undertaking so she was not permitted to join. The workman has remained absent for almost 2½ years and she remained all along in U. K. and USA. She has been previously absent for 511 days as mentioned above.

The workman proceeded to U. K. and USA without prior information and she remained absent up to 03-10-2003. She was absent from 01-02-2001 to 10-02-2003. Her case is different from the case cited by the workman in which minor punishment has been awarded by the bank. Punishment awarded is appropriate in view of her previous absence of 511 days. The inquiry is quite fair. Principles of natural justice have been followed. This Tribunal cannot hold different view as the findings of the Inquiry Officer is not perverse.

The post Staff Nurse was abolished. The management did not retrench her. She was given Class- III cadre and all her emoluments was protected so no prejudice to her was caused by change of her designation.

The workman has not submitted any medical certificate either regarding her illness or the illness of her husband. So the story set forth by the workman does not inspire any confidence. She remained absent for almost 511 days in between 1986 to 1999 and she again absented in 2001 and remained unauthorisedly absent for over 2½ years.

The bank provides customers service. Unauthorised absence causes hardship to the customers as well as to the bank. This workman has been in the habit of absenting unauthorisedly on four occasions. Such workman cannot be retained in service in view of the duties performed by the management.

The law regarding evidence in inquiry has been summarized by the Bench of 3 Judges in 1997 Lab IC 845. It has been held as under:

"In a domestic inquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act."

"The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."

"An Industrial Tribunal would not be justified in characterizing the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In a domestic inquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence. There is also no rule of evidence which lays down that the evidence of a solitary witness cannot be relied upon or merely because there is only a solitary witness in support of the charge, no conclusion can be based upon it even though the evidence of that witness is acceptable as true."

It has been held in this case that in domestic inquiry evidence of a solitary witness is sufficient to hold the charges proved.

It has been held in 2001 (89) FLR 427 as under:

"It is well settled that a conclusion or a finding of fact arrived at in a disciplinary inquiry can be interfered with by the court only when there is no material for the said conclusion; or that on the materials, the conclusion can not be that of a reasonable man."

I have perused the entire inquiry proceedings. It can not be said that the Inquiry Officer has based his findings on surmises. He has discussed the entire evidence adduced in the inquiry and has given his findings. The findings of the Inquiry Officer are not perverse. No interference is required. The D.A. and A.A. have considered the points raised by the workman. The inquiry is valid and orders of the D.A. & A.A. are also just and lawful. No interference is required.

It has been held in 2006 LLR 744 as under:

"Remaining absent for a long time could not be said to be a minor misconduct and it could not be treated lightly—High Court or Tribunal, in exercise of its power of judicial review, would not normally interfere with quantum of punishment —impugned judgment could not be sustained."

In the facts and circumstances of the case the workman is not entitled to get any relief in view of her long unauthorized absence.

The reference is replied thus:

The termination of services of Ms. Sudha Kapila from the management of State Bank of India w.e.f. 7-5-04 on the ground of unauthorized absence is just, fair and legal. The workman applicant is not entitled to get any relief as paryed for.

The award is given accordingly.

Date : 11-06-2007

R. N. RAI, Presiding Officer

नई दिल्ली, 18 जून, 2007

का.आ. 1982.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 9/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-2007 को प्राप्त हुआ था।

[सं. एल-12012/130/2005-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 18th June, 2007

S.O. 1982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2006) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, received by the Central Government on 15-6-2007.

[No. L-12012/130/2005-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT-II, NEW DELHI

Presiding Officer : R.N. Rai
I.D. No. 9/2006

PRESENT

SH. PREM SAGAR SHARMA	...1st Party
SMT. SURABHI RANA	..IIInd Party

IN THE MATTER OF:—

Shri Prem Sagar Sharma,
GH-13/594, Paschim Vihar,
New Delhi.

Versus

The Chief Manager,
Punjab National Bank,
B.O. Shakur Basti,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-12012/130/2005-IR(B-II) Central Government Dt. 01-02-2006 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action of the Chief Manager, Punjab National Bank Shakurbasti Branch in awarding compulsory retirement to Shri Prem Sagar Sharma, Ex-clerk cum-cashier vide order dated 13-09-2003 is just, fair and legal? If not, to what relief the workman is entitled to?”

The workman applicant has filed claim statement. In the claim statement it has been stated that the ‘Lies’ of the management along with respective/relevant/related page Nos. of the so called ‘Enquiry Report’, establishing rater/instead charges on them, reflecting vindictive tendencies/currents through out, though severally pointed already, but remained unreplicated/escaped/evaded by the management, are submitted below, for your worthy selves’s highly esteemed kind ‘Scrutiny’.

MW2’s (Management witness No. 2’s) twin refusal allegation, MW1 (Management witness No.1) ignorant (P-52-56, Q41-49), MW3 silent (Page 19-20, Q1-2). In the incident alleged, MW3 asked me the ‘balance position’ but BB’s (Balance Books) kept with them, as per MW2 deposed (P-86-88-Q63-71). Why & How the four varying, even conflicting, versions of the same alleged incident, three differing one by MW1 (P-14-Q-9) (P-52-53-Q-41) without asking, also (P-65-Q-62) at variance with the 4th one by MW3 (P-19-20-Q-1-2), MW2 is ignorant of the alleged incident (P-78-81-Q33-4-) (P-88-Q-72). MW1 first evaded, ‘why’ than deposed two differing timing of the same alleged incident i.e. 2 p.m.- 3 p.m. (P-52-Q-40)(P61-63-Q59-60 twice), MW1 deposed pre lunch-post lunch, while MW2 deposed being half day (P-78-Q34-35) (P-81-Q40-41) EO’s (Enquiry Officer’s) attempt to prevent truth exposure -Cross termination (P-64-66-Q-63). MW1’s concoction tendencies/investigating; lies’ proved, since earlier refused any other information (P-52-56-Q-41-49). MW3 refused understanding with Sudha -(P-102-103-Q-10-13) but proved, since BB’s unsigned by MW3 as per MW1 (P-43-44-Q30) (P48-Q-37). Despite twin—noting claim (P-38-Q-19-20), though differing, EO ruled same (P-47), Twin—noting practice evasion (P-98-1-2-Q-1-6), since ‘lie’, twin noting absent in the next chargesheet document. Thus proved, resorting to ‘lies’, where so ever they could. ‘Why’ & ‘How’, checking powers delegated to clerks, ‘when’, office order violation even, Then MW3 admitted ‘understanding’ with the CM (Chief Manager) (P-111-1st Para). MW3 refused recognizing BB’s signed by whom

(P-109), again a ‘lie’ since did the same when caught (P-110), while earlier deposed MW3 as ‘checked after resuming duties’ (P-103-Q-15), a ‘lie’, stand changed the next date, ‘would have signed after photocopies taken’ (P-115-Q-34) again a lie, since why not deposed that way, the earlier date, did then, when caught, just proved, ‘Restoring to lies where so ever they could’ : MW3 refused recognizing, despite being in the Branch for 5 ½ years, also cutting/deletion in ME1 (P-107-108-Q-25-27), where prefix Shri is missing with my name only ‘discriminately’ proved charge rather on them again. While MW1 claimed expertise to recognize the ‘vague differing’ ticking of MW3 (P-44-45-Q-30-31), though with less than a year in the Branch. MW1 changed stand from ‘initials’ to ‘tickings’, while MW3 referred as initials (P-111-1st para) also by EO (P-109, 1st para). Thus, resort to ‘lies’, where so ever they could, until and unless caught which may/could not be all the times, thus proved. Could MW1 identify similarly, if shown other BB’s. Though MW1’s same claimed expertise was found missing/absent, disappeared repeatedly when took so many times/chances, to recognize even initials, leave aside tickings, of those who left ME-1 unnoticed, office order violation (P-26-28 Q-1-6), how lied first/evaded. Resorting to lies where so ever they could, MW3 recognized tickings as his ‘initials’ from other photocopies, but lied since caught-red in case of ME-7 (P-108-Q-28). Thus proved, venturing/inventing lies, where so ever they could. MW2 deposed as per dutysheet, a lie, since changed stand/withdrew (P-69-71 Q 17), not opened up/came out on his own about money related duties (P-71-76-Q-9-24), evaded money benefits involved. MW2 refused ‘custodian’ name (P-82-83-Q-47-51), despite tall claims, stand changed evasion (P-76-78-Q-25-32) Again lied about blind lady, changed stand (P-89-91-Q-80-91) Thus proved, resort to lies unless/until caught. Since have been trained/briefed to frame me, but suddenly caught unaware. Physical space referred by MW2, But EO not verified (P-92), Just to save lies/not dig-up the truth, enforced cross-close. ME-2 (Management Evidence No. 2) brought out on MW3’s representation as per MW1 (P-43-Q-29), but MW3 refuted/contradicted (P-103-105 Q-14 onwards) how evasive/escaping, even EO unclear, but ordered otherwise, order already violated (P-105). EO enforced Non-Enquiry refused to look into/investigate the ‘lies’ underline/beneath ‘causes’. MW3 deposed as handed over a letter to the Chief Manager (P-19-20-Q-1-2) but not produced in the ‘Enquiry since fake/a lie, why not issued a letter instantly, at the very first alleged’ ‘cause of action’, to verify the truth. Why they let it prevail as alleged, why silence/non-action, what hatched ‘In between’, since sudden Charge-Sheet was issued on the 3rd day direct, Even the earlier day of the alleged one, I was asked to leave the office, despite the ‘Governments orders’ for the day, my attendance was made as ‘struck-off’ when the officially sponsored ‘lunch’ was about to be served. I was ‘denied’ joining on the very 1st day at the ‘Branch’. Similarly, while

I had submitted a 'Written Reply' on the day of 'Personal Hearing' i.e. 26-8-03, the acknowledgement of which was refused/not direct, but lied in PNB's (Punjab National Bank) Reply on Merits' to the ALC (Assistant Labour Commissioner) at No. 12. Another proof a letter was refused on 28-8-2003.

Financial tortures inflicted with what motive, EO refuses to look into, when MW3 was cross-questioned, since he himself deposed his understanding with the Chief Manager (P-111-1st Para), EO preferred cross-closure, just to evade/prevent the exposure of Vindictive tendencies/operative throughout. Salary Feb '02, was withheld unjustly (with lies) just to harass, just preceding the alleged incident, PF Non-deduction, lied about Medical Aid balance outstanding figures. Than increments withheld, released around 4 months after C.R.S. (Compulsory Retirement Scheme) orders. Medical Aid withheld since the year 2000, Salary partially withheld of the earlier suspension period -left pending for so long, never responded, despite so many/a series of letters to the effect, referred as 'incorrect', 'malicious', out of personal acrimony in page 4, parawise reply no. 3 of PNB's "Reply on Merits"— a written statement to the ALC, but then, was released, more than a years after the 'CRS' orders. Similar in the case of conveyance charges 'withheld'. Even the charges of 7-3-03 and 24-3-03, paid on 27-11-04, but no acknowledgement just to hide/remain clean. Financial tortures inflicted/enforced/imposed for so long, even refuted/lied/never reopened, despite so many letters to the effect cause, kept them remain suspended/hanging fire/unresolved, clearly proved exposed the vindictive tendencies-operative throughout, from behind/back side of the enquiry/action. The 'lies' established clearly. Other lies do exist/apparent, still, through the course of 'Enquiry', but EO Preferred making me 'scapegoat', Since 'otherwise', would have framed the Management i.e. looking into/inquiry/exposing/digging up/unearthing the 'lies' involved, the vindictive designs operative, would not suit the vested interests. And thereby the said action awarded to me, So that their lies could/would be sheltered/protected/remain buried to save their skin since they are powerful/authorities and I am a powerless No body—Non-entity for them.

The management had filed statement, In the written statement it has been stated that the service conditions of the bank employee are governed by industry-wise awards and Bipartite Settlement as amended from time to time. Chapter 19 of the Bipartite Settlement dated 19-10-1966 deals with disciplinary action and procedure therefore. In terms of the provisions of the said Chapter, Bank can take disciplinary action against the workman staff who commits acts of misconduct as defined in the said Chapter and impose the punishment keeping in view the charges establish against the concerned workman staff. Bank had taken disciplinary action against Shri Prem Sagar Sharma for the acts of gross misconduct committed by him during

his posting at BO: Shakur Basti, Delhi and punishment was imposed for proved charges in accordance with the provisions of the said Chapter of the Bipartite Settlement. The workman concerned has not brought out any violation of the provision of Bipartite Settlement.

Shri Prem Sagar Sharma was habitual, in using abusive language not only to his superiors but also to his colleagues and customers of the various branches wherever he worked, for disobeying lawful orders of his superiors and for riotous and indecent behavior, which led to many complaints from customers. Banking is the service industry, which work on the principle of customer satisfaction. His abusive language and go-slow tactics damaged the image of the branch and caused loss to the bank. He was given ample opportunities to improve himself and was posted in different branches as per his choice but his behaviour was same in all the branches and he never amended his work. After giving him verbal warning a number of times bank issued several chargesheets for misbehaving/riotous behaviour either with his superiors/peers or with customers. Even after serving chargesheets bank took lenient view and inflicted punishment of "Warning" upon him in six of the charge sheets. Thereafter a chargesheet dated 6-3-2000 was served upon him for willful slowdown of work for which 41 complaints of the customers were received. After conducting enquiry bank proposed punishment of compulsory Retirement upon him. But again taking lenient view punishment was reduced and final penalty of "Reduction by one stage in the scale of pay" was imposed upon him *vide* order dated 9-4-2001.

Shri Prem Sagar Sharma while working as Clerk cum Cashier at BO : Shakur Basti, Delhi was again served with chargesheet dated 3-4-2003 under para 5(c) read with para (e) of Bipartite Settlement dated 10-4-2002 for abusing and indecent misbehaviour with his superior in the branch premises and for dereliction of duties allotted to him. Shri Sharma submitted his reply to the chargesheet *vide* letter dated 6-4-2002. The Disciplinary Authority while exercising the powers vested. In him and upon not finding the reply submitted by Shri Sharma as satisfactory and finding it expedient to hold a departmental enquiry to find the truth of the charges, ordered for departmental enquiry *vide* letter dated 1-5-02. Shri Sharma participated in the departmental enquiry and during enquiry proceedings he was provided due opportunities to present his case and cross-examine management witnesses. The Enquiry Officer held all the charges levelled against Shri Prem Sagar Sharma *vide* charge sheet dated 3-4-2002 as substantiated. As per provisions of Bipartite Settlement copy of the findings of the Enquiry was sent to Shri Prem Sagar Sharma to seek his submissions on the findings of Enquiry Officer. Shri Prem Sagar Sharma submitted his submissions *vide* letter-dated 27-4-03.

Keeping in view the previous record of Shri Sharma the dismissal was warranted but bank took lenient view

and proposed him the punishment of “Compulsorily Retirement with supernannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment” under Para 6 (C) of Bipartite Settlement dated 10-4-02 *vide* show cause notice dated 16-8-03. Shri Sharma was provided an opportunity, to appear for personal hearing on 26-8-02 and made oral submissions. The Disciplinary Authority after going through the entire enquiry record, evidence adduced, oral submissions made by Shri Sharma during personal hearing and after applying his mind confirmed the punishment of “COMPULSORILY RETIREMENT WITH SUPERANNUATION BENEFITS i.e. PENSION AND/OR PROVIDENT FUND AND GRATUITY AS WOULD BE DUE OTHERWISE UNDER THE RULES OR REGULATIONS PREVAILING AT THE RELEVANT TIME AND WITHOUT DISQUALIFICATION FROM FUTURE EMPLOYMENT” under Para 6 (c) of Bipartite Settlement dated 10-4-02 *vide* orders dated 13-9-03.

Shri Sharma preferred and appeal against orders dated 13-9-03 the Disciplinary Authority while concurring with the decision of the Disciplinary Authority and taking into account the previous service record of Shri Sharma, confirmed the punishment of “Compulsory retirement with supernannuation benefit i.e. pension and/or provident fund and gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment” under Para 6 (c) of Bipartite Settlement dated 10-4-02 *vide* order dated 17-11-03.

Thus Appellant Authority confirmed the punishment taking into account Para 12 (c) of Bipartite Settlement dated 10-4-02 which lays down as under :

“In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist.” The past record of Shri Sharma is as under. Shri Sharma had been served with several charge-sheets in the past as per details hereunder :

FIRST CHARGESHEET:—Shri Sharma was charge sheeted on 3-10-92 while working as C/C at BO : Khan Market (Annexure-1) under para 19.05(c) and (J) of Bipartite Settlement for dereliction of duty and behaving indecently in the premises of the bank and acted in the manner which is prejudicial to the interest of the bank. Disciplinary Authority imposed punishment of “WARNING” upon Shri Sharma *vide* order dated 28-4-94 (Annexure-2).

SECOND CHARGESHEET :—Shri Sharma was charge sheeted on 7-10-92 while working as C/C at BO : Khan Market (Annexure-3) under para 19.5. (c) of Bipartite Settlement for behaviour indecently with his seniors in the premises of the bank. Disciplinary Authority imposed

punishment of “WARNING’ upon Shri Sharma in the matter of charge sheet dated 7-10-92 *vide* order dated 28-4-94.

THIRD CHARGESHEET:—Shri Sharma was charge sheeted on 21-1-93 while working as C/C at BO : Khan Market (annexure-4) under para 19.5(E), 19.5(c) and 19.5(j) of Bipartite Settlement for disobeying the lawful orders of your superiors behaviour indecently and disorderly in the premises of the bank and acted in manner which is prejudicial to the interest of the bank. Disciplinary Authority *vide* order dated 28-4-94 imposed punishment of ‘WARNING’ upon Shri Sharma in the matter of charge sheet dated 21-1-93.

FOURTH CHARGESHEET :—Shri Sharma was charge sheeted on 19-6-96 while working as C/C at BO : Rani Bagh (annexure-5) under para 19.5(C) and 19.5 (j) of Bipartite Settlement for indulging in riotous, disorderly and indecent behaviour in the Bank’s premises during public hours. Disciplinary Authority *vide* order dated 27-7-96 (annexure-6) imposed punishment of “WARNING” upon Shri Sharma in the matter of charge sheet dated 19-6-96.

FIFTH CARGESHEET :—Shri Sharma was charge sheeted on 17-2-97 while working as C/C in BO : Dev Nagar (annexure-7) under para 19.5(c) and 19.5(g) of Bipartite Settlement for disobeying the lawful and reasonable order of the management by refusing and not performing duties allotted to him. Disciplinary Authority *vide* order dated 24-9-98 (annexure-8) imposed punishment of “WARNING” upon Shri Sharma in the matter of charge sheet dated 17-2-97.

SIXTH CHARGESHEET :—Shri Sharma was charge sheeted on 30-9-97 while working as C/C in Regional Office, North Delhi (annexure-9) under para 19.5(H) 19.7(j) and 19.7(k) of Bipartite Settlement for disobeying the lawful and reasonable order of the management by refusing and by not showing proper courtesy towards the concerned management staff and behaving in an unsatisfactory manner while on duty. Disciplinary Authority *vide* order dated 17-1-98 (annexure-10) imposed punishment of ‘WARNING’ upon Shri Sharma in the matter of charge sheet dated 30-9-97.

SEVENTH CHARGESHEET :—Shri Sharma was charge sheeted on 6-3-2000 while working as C/C in BO: Nangloi (annexure-11) under para 19.5 (G) and 19.5 (j) of Bipartite Settlement for willful slowdown in the performance of work and for doing acts prejudicial to the interest of the bank for which bank received 41 complaints from different customers which resulted into loss of face to the bank. Disciplinary Authority *vide* order dated 9-4-01 (annexure-12) imposed punishment of “Reduction by one stage in the scale of pay” upon Shri Sharma in the matter of chargesheet dated 6-3-2000.

EIGHTH CHARGESHEET:— Shri Sharma was charge sheeted on 3-4-02 while working as C/C in BO: Shakur Basti

(annexure-13) para 19.5 (E) and 19.5 (c) of Bipartite Settlement for non performing the allotted work as well as disorderly and indecent behavior. Disciplinary Authority vide order dated 13-09-03 (annexure-14) imposed punishment of "Compulsory Retirement with superannuation benefit" upon Shri Sharma in the matter of chargesheet dated 3-4-02.

NINTH CHARGESHEET:- Shri Sharma was charge-sheeted on 11-7-02 while working as C/C in BO: Shakur Basti (annexure-15) under Para 5 (E) of Bipartite Settlement dated 10-4-02 for willfully disobeying the lawful and reasonable orders of management. Further action was kept in abeyance, as he was compulsorily retired on 13-9-03.

TENTH CHARGESHEET:- Shri Sharma was charge-sheeted on 6-3-03 while working as C/C in BO: Shakur Basti (annexure-16) under para 5 (c) and 5 (j) of Bipartite Settlement dated 10-4-02 for indulging in riotous, disorderly and indecent behaviour in the Bank's premises. Further action was kept in abeyance, as he was compulsorily retired on 13-9-03.

Details about Suspension	Year	Month	Days
07-10-1992 to 18-11-1992	0	1	11
21-01-1993 to 18-04-1993	0	3	17
09-06-1996 to 19-07-1996	0	1	14
06-03-2000 to 09-04-2001	1	1	03
18-01-2003 to 13-09-2003 (till compulsory retirement)			

Thus Shri Sharma worked under different officials during his tenure in the bank and was provided many opportunities to reform himself but he failed to exhibit the reformed attitude and recurrently indulged in acts of gross misconduct and finally the management had to impose the major penalty of "Compulsory Retirement" under Para 6 (c) of Bipartite Settlement dated 10-4-02 vide order dated 13-9-03.

It is stated that the bank has conducted a departmental enquiry against the Claimant in accordance with the provisions governing the service conditions and he has been given due and reasonable opportunity to defend the allegations made against him in the departmental enquiry. However, if at any stage the Ld. Tribunal comes to the conclusion that the departmental enquiry conducted by the Respondent bank is not just fair, in that event it is prayed that the Respondent bank be permitted to lead evidence before the Tribunal to substantiate the allegations levelled in the Charge sheet.

The workman was directed to file fresh legible claim but he insisted to rely on his previous claim. However, he has filed typed copy of the claim.

The management has already filed written statement. The management also insisted that no further written statement is to be filed. The parties did not agree to enter into evidence.

Heard both the sides and perused the papers on the record.

It was submitted from the side of the workman that the management witnesses have told bare lies. It reflects a vindictive tendency of the management. The Inquiry Officer was also biased. He did not consider all the points raised by the workman during the inquiry proceedings. It was argued that the witnesses have given evasive answers and there are material contradictions in their statement.

It was submitted from the side of the management that the disciplinary authority has awarded the punishment of compulsory retirement on the chargesheet dated 03-04-2002 the 8th chargesheet while 9th chargesheet dated 11-07-2002 whereas the 10th chargesheet dated 10-06-2003 are still pending and are regarding riotous disorderly and indecent behaviour in the bank and disobedience of the lawful and reasonable orders of the management.

It transpires from perusal of the 8th chargesheet on which the workman has been compulsorily retired that the workman did not perform the allotted work to him and he did not behave decently with the concerned officers.

From perusal of the Inquiry it becomes obvious that the management has examined 3 witnesses and all the witnesses have been cross-examined at length by the CSE. The brief story is that the workman was advised to cast and tally the balances as on close of business on 31/31-03-2002 MBFD Ledger No.21, 22, 23, 24 & 33. The relative balances were made available to the workman through Shri Mahinder Kumar. The workman refused to take the balance book from Shri Mahinder Kumar and he did not cast the balances in the relative balance book. The work was allotted by Shri S.P. Sharma, Special Assistant who was designated as Checking Officer for the allotted work to the workman. The workman used indecent, dis-orderly language and behaved rudely with Shri Mahinder Kumar, Peon.

The inquiry proceedings disclose that Shri Mahinder Kumar went with the relevant balance books but the workman refused to take the same. Shri S.P. Sharma also requested the workman to check the balance book. The workman has admitted that he has put his signature on the order dated 30-03-2002 by which he was advised to caste and tally the balances of Ledger Nos. 21, 22, 23, 24 & 33.

The management has examined Shri B.C. Gupta as MW1. He has proved that Shri S.P. Sharma and Shri Prem Sagar Sharma have signed the order. So the order has been served on Shri P.S. Sharma.

The management has examined Shri Mahinder Kumar, Peon who tried to entrust the relevant ledger to the workman. MW3 Shri S.P. Sharma has been crossexamined by the workman at length. The workman has been afforded the opportunity to produce his own evidence. He has been also given the show cause notice for personal hearing.

Thereafter the Disciplinary Authority has imposed the punishment of compulsory retirement by speaking order.

I have perused the claim statement of the workman. I am not in a position to understand the same as the sentences are not complete and the entire claim statement does not disclose as to what plea the workman has taken so reliance is placed on the inquiry proceedings.

The inquiry proceedings amply prove that the workman was entrusted the work of casting and tallying the balance books referred to above. The same were made available to him through Shri Mahinder Kumar, Peon. The workman refused to take the balance books and did not perform the work of casting and tallying. He has signed the order of the Chief Manager thus it is a clear case of disobedience of the workman to the orders of the Chief Manager and advice of Shri S.P. Sharma, the Checking Incharge. All the concerned witnesses have deposed in the inquiry and they have been crossexamined by the workman on different points other than the refusal of receiving the balance books and performing the duties as allotted by the Chief Manager. The workman has also behaved indecently with Shri S.P. Sharma, the Checking Officer.

It was submitted from the side of the management that previously the workman misbehaved with the co-employees and officers and he was warned for that on 17-10-1992. The workman behaved indecently with his seniors in the premises of the bank and he was again warned on 23-01-1993. The workman acted in a manner prejudicial to the bank and warning was again issued to him. On 19-06-1996 he was charged of indulging in riotous and indecent behaviour in the bank premises and he was again issued warning. The warnings were issued to him on chargesheet dated 17-02-1997, 30-09-1997 and 06-03-2000. In the last inquiry on the chargesheet dated 04-03-2002 the Disciplinary Authority imposed the punishment of compulsory retirement with superannuation benefit upon the chargesheet vide chargesheet dated 04-03-2002. Chargesheet dated 11-07-2002 and 06-03-2002, the 9th and 10th chargesheet are still pending as he was compulsorily retired on 13-09-2003 on the 8th chargesheet dated 04-03-2002.

It has been also stated by the bank that the workman was suspended on 4 (four) occasions. He remained suspended for 1(one) year 1 (one) month and 3 (three) days from 06-03-2000 to 09-04-2001. He remained suspended from 18-01-2003 to 13-09-2003 till compulsory retirement.

It was submitted from the side of the management that the management has imposed the punishment of compulsory retirement as the workman did not improve his conduct even after warnings on 7 times on different chargesheets. The workman did not raise any dispute so the chargesheets referred to above on 7 occasions shall be deemed to be proved as they have not been disputed. Past

records are material while imposing the appropriate punishment. The workman did not improve after 7 warnings, so the management was constrained to order compulsory retirement as the bank is a service Industry. It deals with customers and public money. The workman was in the habit of indecent and dis-orderly behaviour. His conduct hampered the functioning of the bank, so the DA was bound to inflict the appropriate punishment taking lenient view of the activity and misconduct of the workman.

It is settled law that the Tribunal has no right to consider the adequacy or otherwise of the evidence. It is settled law that in departmental inquiry charge can be held proved on a single testimony of the department.

The law regarding evidence in inquiry has been summarized by the branch of 3 Judges in 1997 Lab IC 845. It has been held as under :—

“In a domestic inquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act.”

“The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record”.

“An industrial Tribunal would not be justified in characterizing the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In a domestic inquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence. There is also no rule of evidence which lays down that the evidence of a solitary witness cannot be relied upon or merely because there is only a solitary witness in support of the charge, no conclusion can be based upon it even though the evidence of that witness is acceptable as true.”

It has been held in this case that in domestic inquiry evidence of a solitary witness is sufficient to hold the charges proved.

It has been held in 2001 (89) FLR 427 as under :—

“It is well settled that a conclusion or a finding of fact arrived at in a disciplinary inquiry can be interfered with by the court only when there is no material for the said conclusion; or that on the materials, the conclusion cannot be that of a reasonable man.”

I have perused the entire inquiry proceedings. It cannot be said that the Inquiry Officer has based his findings on surmises. He has discussed the entire evidence adduced in the inquiry and has given his findings. The findings of the Inquiry Officer are not perverse. No interference is required. The D.A. and A.A. have considered the points raised by the workman. The inquiry is valid and orders of the D.A. & A.A. are also just and lawful. No interference is required.

The reference is replied thus :—

The action of the Chief Manager, Punjab National Bank Shakurbasti Branch in awarding compulsory retirement of Shir Prem Sagar Sharma, Ex-clerk cum-cashier vide order dated 13-09-2003 is just, fair and legal. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Date : 12-06-2007

R.N. RAI, Presiding Officer

नई दिल्ली, 18 जून, 2007

का.आ. 1983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकॉम फैक्ट्री के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देश औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/30 ऑफ 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-6-2007 को प्राप्त हुआ था।

[सं. एल-40011/8/96-आई आर (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 18th June, 2007

S.O. 1983 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.CGIT-2/30 of 2002) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Mumbai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Factory and their workmen, which was received by the Central Government on 18-6-2007.

[No. L-40011/8/96-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

A. A. LAD, Presiding Officer

Reference No. CGIT-2/30 of 2002

Employers in relation to the management of Telecom Factory

The Chief General Manager
Telecom Factory
Deonar
Mumbai-400088.

AND

Their Workmen

The General Secretary,
Rashtriya Telecom Employees &
Workers Union,
D-63, Sarita, Vishwakarma Nagar,
Mulund (W),
Mumbai-400080.

APPEARANCES

For the Employer	: Mr. S.B. Kadam, Advocate
For the Workmen	: Mr. J.H. Sawant, Advocate

Mumbai, dated 25th April, 2007

AWARD

The Government of India, Ministry of Labour by its Order No. L-40011/8/1996/IR(DU) dtd. 13-3-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Telecom Factory, Department of Telecom, Mumbai in not considering the candidature of Sh. T.C. Kamble, Examiner for the post of Inspector in response to the notice dated 24-5-1994 and not giving him all consequential benefits is legal and justified? If not, to what relief the workman is entitled ?”

2. Claim Statement (Ex-6) is filed by the concerned workman Shri Kamble in support of his demand stating that, he is working with first party as Mazdoor from 5-9-97. Then he was promoted to the post of Fitter Grade-I w.e.f. 28-5-85. He was qualified as trade test and as a result of it, he was transferred to Shop No. 13 as Examiner w.e.f. 1-3-89.

3. By notice dated 24-5-1994 applications were invited for selection of candidates for two posts of Inspectors to fill in Shop No. 13. Out of these posts, one was reserved for SC candidate and other one reserved for ST candidate. The candidate also requires five years experience as Examiner to file such an application. Accordingly to workman, he filed application for said post of Inspector but his application was not considered. So he made representation on 29-7-1994 and again by letter dated 4-8-94 where he requested first party to inform him of the reason why his application is not considered and it was replied by first party by letter dated 24-8-94 observing that, second party workman is not eligible to appear for the post of Inspector.

4. According to second party, he was illegally prevented in appearing for post of Inspector. No reason was assigned while discarding his claim. Other candidate who was junior to him was permitted to appear for the post of Inspector. So it is submitted that, decision taken by first party in ignoring claim of second party Kamble and not considering for the post of Inspector be treated not just and proper and he be declared as Inspector with effect from 24-5-95.

5. This prayer is objected by first party by filing reply Ex-9 stating that, second party workman Kamble was not eligible to appear for the trade test of Inspector since he was not possessing the eligibility condition laid down under the rules. Such candidates require to be an Examiner in the skilled trade, and requires five years experience as Examiner. As Kamble was neither Examiner is skilled trade nor he was in possession of requisite experience in the grade of Examiner, he was not considered and decision taken by first party was just and proper. It is denied that, purposely claim of the second party Kamble was ignored. It is denied that, injustice is caused on Kamble and he was deprived of promotion. Since Kamble was not qualified and eligible to appear for the post of Inspector, decision was intimated and it was just and proper.

6. In view of above pleadings, my Learned Predecessor framed issues at Ex-12 which I answer as follows :

Issues	Findings
1. Whether the action of the management Telecom Factory, Department of Telecom, Mumbai in not considering the candidature of Shri T.C. Kamble, Examiner for the post of Inspector in response to the notice dated 24-5-1994 is legal and justified?	Yes
2. Whether the action of the management in not giving him consequential benefits is legal and justified?	Yes
3. What relief the workman is entitled to ?	As per order below

REASONS

Issue Nos. 1 & 2 :—

7. By this reference second party Kamble raised dispute about his claim over post of Inspector stating that, first party purposely ignored his claim on the post of Inspector and said decision was intimated to him by notice dtd. 25-5-94 was not legal & just. Whereas stand of first

party is that, second party Kamble was not eligible to permit to appear for post interview and consider the post of Inspector. He was having no qualification of Examiner in the skilled trade and five years experience as Examiner.

8. To support that, second party Kamble place reliance on his evidence led by him by way of affidavit Ex-21. In the cross he admits that, he failed in two initial tests and did not appear in third and fourth tests. He admits that, no training was provided to him. He admits that, he acquired status of Examiner. He admits that, he did not pass trade test as he did not appear for the same. Besides first party's evidence produced at Ex-23 reveals that, second party was not eligible to appear for the post of Inspector and was not having experience of five years.

9. Second party filed written arguments at Ex-26 whereas first party at Ex-27. This argument is nothing but reproduction of their pleadings.

10. Here, we have to consider whether second party Kamble was having qualification and still he was ignored? Evidence brought on record reveals that, second party was not Examiner in the skilled trade and was not possessing five years experience as Examiner on 16-6-91. Even he admits that, he did not appear for trade test which was required to pass within six months from the date of transfer. So when second party Kamble was not qualified, the decision taken by first party in not considering second party for the post of Inspector appears not abnormal or illegal as well as unjustified unless and until, second party proves his eligibility to claim that cost. The evidence reveals that, second party was not having that qualification.

11. So considering this, I conclude that, second party Kamble was not eligible for the post of Inspector and the decision taken by First party in not considering his claim for that post and other ancillary benefits was just and proper. Hence the order :

ORDER

Reference is rejected with no order as to cost.

Dated : 25-4-2007

A.A. LAD, Presiding Officer

नई दिल्ली, 18 जून, 2007

का.आ. 1984.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडर हेडक्वार्टर्स, 14 आर्टिलरी ब्रिगेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 165/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-6-2007 को प्राप्त हुआ था।

[सं. एल-14012/65/2002-आई आर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 18th June, 2007

S.O. 1984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 165/2002) Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Commander Headquarters, 14 Artillery Brigade and their workman which was received by the Central Government on 18-6-2007.

[No. L-14012/65/2002-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Shrikant Shukla : Presiding Officer

I. D. 165/2002

(Ref. No. L-14012/65/2002-IR (DU)

Dt 11-10-2002

BETWEEN

Shri Narayan Singh,
S/o. Sri Baru Ram,
75/119, Dalanwala,
Dehradun.

And

The Commander,
Head Quarters,
14 Artillery Brigade,
56, APO, Dehradun,
Dehradun.

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following dispute *vide* No. L-14012/65/2002-IR(DU) Dt. 11-10-2002 for adjudication to the Presiding Officer, CGIT-cum-Labour Court, Lucknow :—

“Whether the action of the Commander Headquarters 14, Artillery Brigade, 56 APO, Dehradun in Terminating the Services of Sri Narayan Singh Project Operator w.e.f. 28-3-2002 is just and Legal? If not, to what relief the workman is entitled to?”

Worker's case in brief is that he was employed as Civilian Project Operator in G.K. Cinemas run by Commander Headquarter 14 Artillery Brigade 56 APO, Dehradun but was terminated on 28-3-2002 without any prior notice, and without paying any retrenchment compensation. It is also alleged that during the period of employment worker has been requesting for regularisation

and providing the scale which caused annoyance to the opposite party. It is also alleged that the post of Civilian Project Operator is of permanent nature and is vacant. It is further submitted that the opposite party notified on 25th April, 02 that the G.K. Cinema shall remain closed w.e.f. 15-2-2002. It is again stated in the claim statement that the said Cinema became operative w.e.f. 1-12-02 and opposite party has employed new Civilian Operator in his place which is clearly violation of I.D. Act. Worker has accordingly prayed that he should be reinstated with continuity of service and back wages.

Opposite party has filed reply stating therein that on 19-12-01 on account of National Emergency, the Armed Forces were mobilised to the borders. Consequently the troops moved out of Clement Town Garrison and Golden Key Auditorium was closed down w.e.f. 18-12-01. A letter regarding conclusion of services, Temporarily, was handed over to Mr. Narayan Singh. Thus, the contention of the individual, that his services were terminated without fore warning is incorrect. In spite of the uncertainty of the services of individual was terminated though servicing of film stopped w.e.f. 15-2-2002. Primarily due to security reason and secondly the institute being a non profit making body, it was not possible to continue screening movies due to sharp fall in the revenue. As Mr. Narayan Singh served continuously during this period, he would be aware that films were not screened in the Golden Key Auditorium since 15-2-2002. The Auditorium was sealed and a security guard placed there. As regards Mr. Narayan Singh's contention of the Golden Key Auditorium reopening, it is confirmed that consequent to the de-mobilisation of the Armed Forces Golden Key Auditorium started operating with effect from 1st Dec., 2002. However, the management has not employed any projector operator in place of Mr. Narayan Singh. As now Golden Key Auditorium is being run by army personnel, in all respects including screening of films. It is further submitted that Narayan Singh was employed as a part time projector operator at Golden Key Auditorium, Clement Town. It is also stated Golden Key Auditorium is multi-purpose auditorium, not used only as cinema hall. The auditorium is utilised for training events such as lectures, seminars presentations, discussions and meetings for troops and their family welfares. As a welfare measure the auditorium is also used for screening movies for troops and their families, in the evenings only. Therefore, the services of Narayan Singh were put to use in the evenings only. It is submitted that the period of employment was w.e.f. July, 2001 to 1st June, 2002 *vide* 3300/Golden Key Auditorium/250/A dt. 18th July, 2001. During the period of employment Sri Narayan Singh never sought regular employment or increase in his emoluments. The contention of the individual that opposite party annoyed at his demands is unfounded and merits no consideration. It has been pointed out that Golden Key Auditorium was closed from 19 Dec. 2001, and finally sealed on 15 Feb.

from 19 Dec. 2001, and finally sealed on 15 Feb. 2002, the individual was paid his monthly emoluments upto 30 April, 2002.

Opposite party has also filed the letter of closure of G.K. Auditorium dt. 25-4-2002 paper no. 8/4 and receipt of salary for the month of March & April, 2002 paper no. 8/5.

Worker has filed rejoinder in which has reiterated facts stated in the statement of claim. He has also stated that Kush Bahadur has been appointed in his place as Civilian operator and has also stated that he worked continuously on 27-3-02 although the G.K. Auditorium finally closed on 15-2-02. In the same rejoinder it is also mentioned that “ जी.के. सिनेमा 19 दिसम्बर 01 को बन्द कर दिया गया था तथा अन्तिम रूप में दि. 15-2-2002 को बन्द कर दिया था। जबकि श्रमिक द्वारा 27 दिसम्बर, 2002 तक ड्यूटी की गई थी।”

Sri Narayan Singh has filed the photo state copies of the following documents :

1. Photo copy of appointment letter dt. 18 July, 01 regarding appointment from 1st July, 01 to 1st June 2002 on consolidated salary of Rs. 2750/- paper no. 12/1.
2. Notice of Asstt. Labour Commissioner (C) Dehradun.
3. Photo copy of letter of 25th May, 2001 address to Office Incharge, Golden Key Cinema, Clement Town, Dehradun.
4. Temporary pass civilians in respect of worker paper no. 12/4, 12/5, 12/6.
5. Manual of G.K. Auditorium paper no. 12/7 to 12/14.
6. Photo copy of cheques in the name of Narayan Singh paper No. 12/5 and 12/16.
7. Photo copy of entry pass of G.K. Auditorium.

Worker has examined himself and the opposite party has examined Lt. Col. TK Mahendra.

Opposite party has filed written argument, however the worker has not filed written argument nor put forth any argument.

Carefully perused the arguments on record and pleadings together with evidence on file.

Worker has given following facts in the cross examination:

“सिनेमा Auditorium में दिखाया जाता था। कोई टिकट का पैसा नहीं पड़ता है। जवानों के बेतन से जो पैसा कटता था उसी से पास दिया जाता था और जवान उसी पास से सिनेमा देखते थे। जवानों से किरण पैसा कटता था वह मुझे मालूम नहीं है। उसी Auditorium में जिसमें सिनेमा दिखाया जाता था उसी में सांस्कृतिक कार्यक्रम भी होता था और उसी Auditorium में जवानों को Training भी दिलाया जाता था। नहीं मालूम की साल में कितने Cultural programme

और कितने Lecture होते थे। आखिरी दिन जब मैंने नौकरी किया उस दिन 15 field रेजिमेंट थी। 14 Artillery Brigade अभी भी है और आखिरी दिन काम किया था उस दिन भी थी। जी.के. Auditorium जिस आखिरी दिन मैंने काम किया उस दिन 15 field Regement चला रही थी। मुझे 220 रेजिमेंट ने employ किया था।”

Sri Narayan Singh further stated that;

“जब आखिरी दिन मैं नौकरी कर रहा था उस दिन जवान लडाई के लिये कूच कर दिये थे।”

“मेरे अलावा कोई सिविलियन नहीं इसमें कार्यरत थे तथा बाकी सारा काम जवान ही किया करते थे।”

Worker has admitted that Paper No. 12/1 appointment letter has been filed by him. Paper No. 12/1 is read as under;

Sri Narayan Singh,	3300/GKA/250/A
76/120; Old Dalan Wala,	18th July, 2001
Dehradun.	

APPOINTMENT

1. Please refer to your letter dated 25 May, 2001 addressed to The Officer Incharge Golden Key Cinema, Clement Town, Dehradun.

2. You are hereby appointed as a projector operator on Golden Key Auditorium of 14 Inf Div. on part time basis for a period of 11 (Eleven) months. The period of employment is from 1 Jul. 2001 to 1 June, 2002.

3. your monthly emoluments will be Rs. 2700 per month consolidated.

4. Your tenure of duty will be from 2.30 PM to 10 PM every day. Canteen will be run under arrangement of unit responsible for management of Golden Key Auditorium. The organisation is not obliged to allot the same to you.

Sd/-

(GS VINOOD)

Lt. Sec.

G.K. Auditorium

From the perusal of the above letter it is evident that the worker was engaged for 11 months i.e. from 1-7-01 to June, 2002 at the consolidated salary of Rs. 2700 per month. It was also written in the appointment letter that canteen will be run under arrangement of unit responsible for management of Golden Key Auditorium. The organisation is not obliged to allot the same to the worker. In the said context the letter of Sri Narayan Singh addressed to Officer Incharge, G.K. Auditorium, Dehradun Paper No. 12/3 is attracted wherein the worker has written that he was employed as Cinema Operator in Golden Kay Cinema by 228 Med. Regt. in June, 1997 at the scale of Rs. 1800/- per month with the following verbal agreements;

- (a) Grant of yearly increment as given to Central Government employees.
- (b) Grant of half yearly DA as given to Central Government employees.
- (c) Grant of yearly bonus as given to Central Government employees.
- (d) Grant of cash in lieu of leave not availed.
- (e) Allotment of cinema canteen to me.

The said application paper No. 12/3 has a recital that Cinema Canteen was allotted to him but on arrival of Brig. BPS Lamba it was taken back from him and in view of the said fact the worker requested to consider his request.

It appears from the perusal of appointment letter dt. 18-7-01 that worker request for allotment of Cinema canteen was not exceeded and it was given directly to the management of Golden Key Auditorium, however, he was put on consolidated salary of Rs. 2700.

Commander Headquater 14 Artillery Brigade, Dehradun is not a establishment which exhibit cinema but it is sovereign institute which post carries of sovereign functions. Opposite party is not, with any stretch of imagination could be termed as industry. Commander of 14 Artillery Brigade Dehradun has not appointed Sri Nayayan Singh. It is provided in the documents of the manual of G.K. Auditorium of 26-5-97 that unit nominated will run G.K. Auditorium for duration of one year in rotation. As a welfare measure for the tops, movies will be screened in the Auditorium on daily basis besides auditorium will be used for central function including functions of Army School and GKFS. For the smooth running following staff has been nominated they include;

- (a) Secretary GK Auditorium
- (b) One JCO.
- (c) One NCO & Seven Ors. for gate keeping
- (d) Two Asstt. Operators.
- (e) One Civilian Operator.
- (f) Accounts Clerk.

The CO of the unit running the Auditorium will be the vice chairman and Commander 14 Artillery Brigade will be the chairman. The Cinema timing is given in the manual are matinee and night show. It is also provide cinema passes will be issued to all the individuals of the unit. Retired persons have also been allowed to have entry in the cinema hall as per rate prescribed. Out of auditorium fund the payment will be made for rent charges, for the movies, pay of civilian operator, ED pay for OR working in the auditorium expenditure on day to day maintenance and cost of diesel etc. It also provides that Rs. 2400 per month payment to civilian operator with the provision that the same will be reviewed periodically.

Lt. Col. TK Manendra, the witness of the opposite party has stated in his evidence that 14 Inf. Divn. is a field formation and its location during peace period at Clement Town, Dehradun. It is temporary location it has to move to operational location border areas where they are required for training or operation and in the circumstances the 14 inf. divn. has to move with the result that all officers and troops do not remain at Clement Town, Dehradun except some persons and troops for the security of building and stores. He has also stated that this town is located at distance of 12 to 15 kms. from the city of Dehradun and therefore to cater necessary need of recreational needs some arrangements have been made and GK Auditorium is also made available to the officers and troops for training and other activities, however recreation have to be stopped during the period of training and operational period and whatever activities take place i.e. result of welfare activities. The officers and troops contribution for the smooth running of the G.K. Auditorium. It is also stated by him that ordinarily the army soldiers are engaged in the work from 6 AM to 2 PM and 4 PM to 6 PM and in the circumstances there is one show in a day however, on Sunday the two shows are also organised and general public is not allowed to watch the films in the GK Auditorium. It is also stated by him that all workers required to manage the work in GK Auditorium are soldier of the force and during the National Emergency or border operation the troops have to move and therefore G.K. Auditorium is closed. Col. Mahendra has also stated that Narayan Singh was engaged for operating the project from 1-7-01 to 1-6-02. He has also stated that worker refuse to acknowledge the receive the letter of 25-4-07 in the present of two witness. Col Mahendra has stated in the cross examination that National emergency was declared on 19-11-01 and troops written back in the Dec., 02. He has also stated that whenever any person needed the workers are engaged and they are on temporarily passes and after validity is over the passes are taken back. He has also stated that G.K. Cinema has account in Punjab National Bank and cheque signed by the Secretary, G.K. Auditorium and Commander Officer. He has also stated presently he is secretary of the G.K. Auditorium.

Learned representative of the opposite party has argued that training of personals of army takes priority on all recreational activities and the movies in G.K. Auditorium screened only for defence personnel staff and their families and no civilian are permitted. It is welfare measure activities and not having any profit making motive. There is no official provision of running the cinema nor any staff is authorised by the Government of India.

Ministry of Defence and establishment of 14 Inf. Divn. is being run purely welfare of Jawan and their family located at Clement Town, Dehradun. Opposite party has also denied that Narayan Singh had been working 1-6-97 as Projector Operator from more than 8 hours per day. It is also alleged that worker has not completed 240

days in the preceding one year. The service of the worker was engaged for fixed term. After dispensation of the service of the worker Narayan Singh no other civilian person has been engage as is being falcy alleged by the worker. It is also alleged that the present matter does not fall under the I.D. Act, 1947.

Opposite party representative also argued that management is not industry as defined in I.D. Act 1947. Opposite party is a integral party of the Indian Army. Opposite party has sovereign functions of the state. Running of G.K. Auditorium is not main activity of the core activity of the opposite party. Even the welfare activities undertaken by the opposite party does not amount to industry.

From the evidence on record it is clear that Conductor, Headquarter, 14 Artillery Brigade, Dehradun, discharges sovereign functions and is not an industry.

It is also evident from then evidence on record that G.K. Auditorium is used commonly for training as well as recreation purposes of the troops. When G.K. Auditorium is used for recreation purposes or for exhibiting cinema, its functions is that of welfare with no profit motive, but it forms the status of any cinema hall being run in the state. It is well established that merely because it is a non profiting enterprise does not by itself exempted it from the category of industry.

Worker has alleged that he has been employed as civilian operator since 1-6-97. It is not worthy that the worker represented on 15th May 2001 represented to office Incharge G.K. Auditorium, Clement Town Dehardun which shows that he was employed as cinema operator in G.K. Cinema by 228 Med. Regt. in June 1997 at the scale of Rs.1800 per month with the following agreements;

1. Grant of yearly increment
2. 1/2 yearly DA
3. Yearly bonus
4. Grant of cash and allotment of canteen

Worker has also admitted that he was not given any appointment letter for previous employment. He has also admitted that he has not given any DA. However, he has stated that salary increased from Rs. 1800 to Rs. 2100 and in the year 1999 it was Rs. 2400 and it continues so till 2001.

Worker has admitted that he was employed by 228 Med. Regt. In the circumstances there was no employer and employee relation between 14 Artiller Brigade, Clement Town, Dehradun when the worker was employed in 1997. Worker has also admitted that he has filed the document paper No. 12/1 which is appointment letter. This appointment letter has been issued by Secretary, G.K Auditorium Sri G.K. Vinood Ltd. of 14 Artillery Bridge. 12/1 appointment letter has been issued with reference to letter of 25th May 2001 of the worker wherein he was appointed for a period of 11 months i.e. to say 1st July 2001 to 1st June 2002. This letter envisage that the services of

the worker, were on the contract which expired on 1st June 2002. Worker has not raised any dispute against 22nd Med. Regiment, therefore any appointment made by 228 Med. Regiment is not binding upon on 14 Artillery Brigade.

It is on the record that unfortunately 14 Artillery Brigade moved out on the border due to national emergency on 19th Nov. 2001. In the circumstances the beneficiaries of the 14 Artillery Brigade were not available for visiting G.K. Cinema. In the circumstances G.K. Auditorium was to be closed from 15th Feb. 2002 and worker had no opportunity to work thereafter and the fact was notified to Narayan Singh in particular on 25th April 2002 wherein he was informed that his services are no more required. Till there is a change in operational situation.

In the circumstances the worker is said to be terminated on 28-3-02. Worker has also admitted that last day when he worked in 14 Artillery Brigade was not there in Clement Town but it was 15th Field Regiment.

It is noteworthy that 14 Artillery Brigade, Secretary of G.K. Auditorium was the employer which issued order of the appointment and when the troops moved to borders in absence of 14 Artillery Brigade no one else could employ him.

Worker is not a civilian Government servant of the Central Government who can claim the benefits available to the Central Government staff. His appointment was merely on consolidated salary of Rs.2700 and according to the appointment paper No. 12/1 the workman was to be employed till 1st June 2002 and not hereafter. It is also on the record that 14 Artillery Brigade fully returned to the barracks Clement Town in Dec. 2002 and the worker can not claim to be employed after 2nd June 2002 as contract of service concluded on 1st June 2002. Lt. Col. TK Mahendra of Rapid Signal Regement has stated that presently both the operator of G.K. Auditorium are departmental who are deployed for duty after the normal duty. Worker can not forced the 14 Artillery Brigade to employ him after 2nd June 2002.

The analogy of working of 240 days before termination is not applicable to the present case, however, he was entitled to the work upto 1st June 2002. It is also noteworthy that closure of G.K. Cinema was just as the troops for whose recreation G.K. Auditorium was to function was not available at the same time the employer ought to have paid compensation in the form of salary upto 1st June 2002. The issue is accordingly answered and the worker is entitled to the salary to be computed as per the appointment letter from 28-3-02 to 1-6-02 if not already paid. There is no question of giving him any notice, notice pay or retrenchment compensation. Award passed accordingly.

Lucknow
11-6-2007

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 19 जून, 2007

का.आ. 1985.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब व सिन्ध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 43/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-06-2007 को प्राप्त हुआ था।

[सं. एल-120] 2/24/92-आई आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 19th June, 2007

S.O. 1985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/92) of the Central Government Industrial Tribunal-cum-Labour Court No.2, New Delhi as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman which was received by the Central Government on 18-06-2007.

[No. L-12012/24/92-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

PRESIDING OFFICER: R.N.RAI I.D. NO.43/1992

PRESENT

SH. INDERJIT SINGH — 1st PARTY

SH. J. BUTHER — 2nd PARTY

IN THE MATTER OF:-

Shri Inderpal Singh,
R/o. 26/51, West Patel Nagar,
New Delhi.

Versus

The Zonal Manager,
Punjab & Sind Bank,
Aatma Ram House,
Connaught Circus,
New Delhi-110001.

AWARD

The Ministry of Labour by its letter No. L-12012/24/92-IR-B-II Central Government Dt. 29-04-1992 has referred the following point for adjudication:

The point runs as hereunder:—

“Whether the action of the management of Punjab and Sind Bank in dismissing the workman Shri Inder

Pal Singh w.e.f. 25-05-1991 is justified? If not, to what relief the workman is entitled to?”

The workman applicant has filed claim statement. In the statement of claim it has been stated that the workman was initially appointed in Punjab and Sind Bank as an apprentice in the year 1977 and after satisfactory and successful completion of 6 months apprenticeship period he was taken as regular Clerk-cum-Godown Keeper in the service of the bank in April, 1978. His service conditions were governed by Shastri Award, 1954 as modified on various dates. That the bank was national bank. The relationship between the bank and workman is statutory. The bank was estopped from action arbitrarily against the workman in any matter and had a constitutional duty to act fairly and in compliance with the principles of natural justice before taking any proceedings or action which would adversely affect the workman or visit him with any evil consequences.

It is further submitted that he took active interest in the trade union movement of the employees of the bank and because of the resulting displeasure of the certain authorities of the bank against the workman, the Regional Manager of the bank at New Delhi abruptly issued orders for transfer of workman to far off, small, secluded office i.e. the extension counter, Delhi Cantt.. without any rhyme or reason and inspite of the fact the services of the workman were not required at that small office. He made representations to the Regional Manager and also opposed personally to appoint him in the vicinity of his house as he was handicapped due to injury suffered by him. But the Regional Manager did not pay any attention to the workman's request. The Regional Manager leveled certain false and baseless allegations against him of indecent behaviour with the Asstt. General Manager. The workman has attached copies dated 30-5-1988 to 2-6-1988 and 21-6-1988 as annexures W-2, W-3 and W-4. It is further submitted that manifestly one of the charges was of Sunday, which indicates that all the charge have been false and he has falsely implicated as the Regional Manager was offended as he wrote letter against the AGM. The management arbitrarily deducted his wages from 19-4-1988 on the otherwise unfounded charge of being unauthorisedly absent from office which was also done at the instance of the Regional Office and ultimately when the management refused to refund this illegal recovery/deduction the workman had to file an application before the Central Government Labour Court, New Delhi for recovery of these wages. The management refunded such illegal deducted wages of the workman in pursuance to the orders of the Labour Court but with this the management became all the more annoyed and vindictive against the workman. The workman submitted a letter dated 29-6-1988 to the Regional Manager denying all the baseless allegations and requested that he should be posted in the branch near his residence which is annexure W/7.

It was further submitted that despite all the attempts of the workman, the Regional Manager took no action. Again he wrote on 13-8-1988 that the workman was surplus at their end, the workman was transferred at Kirti Nagar Branch towards the end of August, 1988.

That it has been further submitted that he joined the Kirti Nagar Branch and he was asked to take charge of the cash counter as the officials have refused to take charge of the cash counter which is annexures W/9 and W/10.

That the officers of the bank, inspite of all the cooperation shown by the workman in the smooth running of the branch, got annoyed with the workman, when he reported to the higher authorities that on 26-2-1989 he had left the branch before its being closed and inspite of the fact that the gunman had left the branch much earlier, thus leaving the branch unguarded and that in the absence of the Branch Manager and the gunman, the branch had to be closed by the workman and because of his displeasure against the workman due to his report to the higher authorities his irresponsible conduct, he started threatening the workman with teaching him a lesson for his life time for reporting against him.

The Branch Manager at Kirti Nagar told the workman that he had received instructions from the higher authorities to implicate the workman somehow or the other. The workman wrote a letter dated 7-7-1989 to the Regional Manager which is annexure W-11 which was forwarded to the General Secretary of the Union demanding inquiry and action against the Manager, Kirti Nagar Branch which is annexure W/12.

It has been further submitted that on 27-7-1989 the Manager complained against him and said he was going to settle in America but before that he would involve the workman in some or in the other cases. The workman reported this matter to the Area Manager, New Delhi by letter dated 27-7-1989, Delhi attested by the member of staff who were witness to the above threatening behaviour of the Branch Manager which is annexure W/13. The Regional Manager, Shri P. S. Kohli was personally annoyed and greatly inimical against the workman as he told the workman that the workman had instigated his brother, Shri H. S. Kohli to make a complaint that Shri P.S. Kohli had raised a bogus benami loan in the name of Shri P.S. Kohli the Regional Manager which can be verified from the records.

That the threats held out to the workman by the Manager, Kirti Nagar Branch at his own behest and at the behest of the Regional Manager and other higher authorities came to be translated into action when on 20-8-1989, the Regional Manager Shri Kohli issued a charge sheet to the workman, charging him with alleged disorderly and indecent behaviour on the premises of the bank, willful insubordination and acts prejudicial to the interest of the bank on 14-8-1989, 26-8-1989, 30-8-1989 and 31-8-1989 which is annexure W/14.

The workman received the above charge sheet and he denied all the allegation which is annexure W/15. The Regional Manager abruptly placed the workman under suspension by a letter dated 2-11-1989 on the ground of the reported misbehaviour of the workman with the Branch Manager and disrupting the working of the branch which is annexure W/16.

The Regional Manager issued another charge-sheet dated 19-10-1989 to the workman again charging the workman of disorderly and indecent behaviour with the Branch Manager on 25-8-1989 which is annexure W/17. The workman is addressed another letter to the Director Grievances of the bank at New Delhi bringing to his notice a number of grave financial irregularities of the Bank Manager which is annexure W/19.

It has been further submitted that a third charge sheet dated 6-11-1989 was issued to the workman by the Regional Manager on the charge of violent, disorderly and indecent behaviour with the Branch on 30-10-1989 which is annexure W/21.

That the domestic inquiry was held and Mr. D. S. Jolly, Sr. Manager, Regional Office, New Delhi was appointed as Inquiry Officer for the purpose which is annexure W/21. Inquiries were conducted regarding charge-sheet dated 20-9-1989 and 6-11-1989. The workman attended all the three inquiries. Mr. Fateh Singh Jaspal as management witness in support of the charge and the workman requested to arrange his defence representative and to submit his list of documents and witnesses.

That inquiries into all the three charge-sheets were adjourned for 25-1-1990 but the workman suffered from hypertension and was admitted to Anand Clinic on 23-1-1990. He sent a letter regarding the same on 24-01-1990 to the Area Manager of the Bank regarding his sudden illness and admission into the hospital which is annexure W/23. The Inquiry Officer did not accept any medical certificate to grant adjournment any longer unless the certificate is issued by the Chief Medical Officer of Delhi or is countersigned by the Chief Medical Officer confirming its genuineness and that in case of non-attendance of the workman, the inquiries will be held ex parte.

That the workman received the Inquiry Officer's telegram and its post copy dated 15-2-1990 on 16-2-1990 and on the same date he addressed a letter to the Inquiry Officer protesting against ex parte conduct of the inquiries on 15-2-1990 and informing him that he had reported to the Government Hospital on 12-2-1990 as per Inquiry Officer's letter dated 7-2-1990 where he was examined by the Medical Superintendent and was recommended rest for a week from 12-2-1990 and requesting for postponement of the inquiries at least till he was declared fit by the medical authorities.

The Inquiry Officer adjourned the inquiry and fixed for 17-2-1990 after recording acknowledgment of the workman's letter dated 16-2-1990 but he fixed all the three

inquiries to be held on 27-2-1990. The workman again submitted a medical certificate of Dr. Ram Manohar Lohia Hospital on 19-2-1990 asking for 15 days time but the Inquiry Officer proceeded ex-parte and took evidence. The workman demanded the change of the Inquiry Officer to the higher authorities and sought permission for engaging lawyer but his request was not considered.

That the workman sent a reminder dated 24-2-1990 in the matter to the Disciplinary Authority reiterating his contention about the Inquiry Officer being against him and further requesting the Disciplinary Authority to advise the Inquiry Officer adjourn the inquiry proceeding in the meanwhile as he was also still under medical treatment. The Disciplinary Authority asking the workman to quote specific instances proving the biasness of the Inquiry Officer and informing the workman that he had taken note of the other points mentioned in the letter and had advised the Inquiry Officer in that regard. The inquiry was adjourned for 6-3-1990. The workman has been advised rest for further two weeks and asked the Representing Officer to submit the written arguments. It was further submitted that the workman did not receive a copy of the written arguments of the management as such principles of natural justice have not been followed by the management witness. The chargesheet was fake. The Inquiry Officer was not changed though he has requested for it as he was biased against him and he has already threatened him. As such the inquiry is not fair and according to the principles of natural justice.

The management has filed written statement. In the written statement all the paragraphs of the statement of claim have been denied. It has also been denied that the Inquiry Officer was biased against him. It has been asserted that the workman due to reasons known to him, sought several adjournments, got himself admitted in the hospital and wanted to change the Inquiry Officer so the Inquiry Officer was not changed.

It was further submitted that the workman was not ill but he wanted to prolong the inquiry proceedings, so the inquiry was held ex-parte against him. He was sent letter regarding proposed punishment but at that time too, he sought one month's time but his application was not considered and the proposed punishment of dismissal was passed.

The workman applicant has filed rejoinder. In the rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

Award dated 26-3-2004 has been set aside by the Hon'ble Delhi High Court and it has been directed that

after taking fresh evidence of the parties, award should be given again.

The management has examined 4 witnesses namely Shri D. S. Jally, Dy. GM, Harpreet Singh Makka, Shri S. K. Bhal, Sr. Manager and Shri Upkar Singh the Disciplinary Authority.

None of the witnesses were posted in the concerned branch on the dates of the occurrence. The witnesses have almost stated that they have no personal knowledge about the incident as they were not posted in the concerned branch on that date.

It was submitted from the side of the management that 3 chargesheets were issued to the workman on 20-9-1989, 19-10-1989 and 6-1-1989. The inquiry against all the 3 chargesheets have been concluded and the workman has been found guilty of the charges levelled against him.

This case relates to charge-sheet dated 20-9-1989 so it is not material what has transpired in the inquiry against the chargesheets dated 19-10-1989 and 6-11-1989.

It was further submitted by the management that the workman misbehaved with Shri Fateh Singh Jaspal on 14-8-1989 and 31-8-1989. Shri Fateh Singh Jaspal informed the concerned authorities on the same day. Inquiry conducted against the workman is fair. Principles of natural justice have been followed. The workman intentionally did not appear in the inquiry so the Inquiry Officer proceeded ex-parte against him.

It was submitted from the side of the workman that the Inquiry Officer concluded the inquiry hastily despite the fact that the workman sent letters for adjournment alongwith medical certificates.

It was further submitted that medical certificate of Safdurjung Hospital dated 1-3-1990 seeking adjournment was sent by the workman but still the inquiry proceeding was not adjourned. The Inquiry Officer concluded the inquiry on 13-3-1990.

The workman sent medical certificate of Dr. Ram Manohar Lohia Hospital on 19-2-1990. The Doctor has advised him 15 days rest but the Inquiry Officer did not adjourn the proceeding.

The workman sent certificate of Dr. Anand Clinic on 23-1-1990. The workman was directed to file certificate of CMO. The workman filed 2 (two) certificates one of RML Hospital dated 17-2-1990 and another of Safdurjung Hospital on 1-3-1990. It is admitted to the management that the Inquiry Officer has received all the 3 applications alongwith medical certificates. The Inquiry Officer has noted the receipt of the application and medical certificate still he proceeded ex parte. The inquiry was concluded on 13-3-1990 and the Inquiry officer submitted his report on 29-3-1991.

It was submitted from the side of the workman that the Inquiry Officer concluded the inquiry within 2½ months but he submitted his report just after a year. From perusal of the records it transpires that the first date in the inquiry was 21-12-1989, the workman was present. The Presenting Officer has filed documents and the inquiry was adjourned to 8-1-1990. The workman sought adjournment on 8-1-1990 on the ground of illness. The next date fixed was 25-1-1990. The Inquiry Officer has noted in the inquiry that he received telegram on 24-1-1990 requesting adjournment up to 11-2-1990 on account of illness with medical certificate. The Dr. has advised 15 days rest to the workman. The inquiry was fixed for 15-2-1990. The workman submitted medical certificate of Ram Manohar Lohia Hospital and sought adjournment by telegram. It is noted in the inquiry proceeding but the Inquiry Officer recorded the statement of Fateh Singh Jaspal, MW1 in the absence of the workman. Thereafter 2 dates were given by the Inquiry Officer i.e. 17-2-1990 and 27-2-1990 and the inquiry was closed on 6-3-1990.

From perusal of the inquiry proceedings it becomes quite obvious that the 3 dates 8-1-1990, 25-1-1990 and 15-2-1990 were given by the Inquiry Officer and the statement of Fateh Singh Jaspal was recorded on the 3rd date i.e. on 15-2-1990 and the case proceeded ex parte. The workman has submitted medical certificate of Government Hospital on all the dates. The Inquiry Officer concluded the inquiry within two months after 3 dates despite 3 medical certificates submitted by the workman.

It is said hastily done is not wise. It was the duty of the Inquiry Officer to adjourn the proceeding but he appears to be in the hottest of hot haste and he concluded the inquiry within 2½ months.

It has been held in 1994 Supp. II SCC 518—Union of India Vs. I.S. Singh as under :—

“Where the applicant submitted that he had sent three letters alongwith medical certificates but the Inquiry Officer did not pay any heed to them. On behalf of the Union of India, it was submitted that no medical certificates were enclosed. But the Supreme Court quashed the ex-parte proceedings by observing that even if no medical certificate was enclosed the proper course for the inquiry officer was to have called upon the respondent to produce a medical certificate or direct him to be examined by a medical officer specified by him.”

In this case letters alongwith medical certificates were sent by the CSE but the Inquiry Officer did not adjourn the proceedings. The Hon'ble Supreme Court quashed the ex parte proceedings. In this case also 3 medical certificates were received by the Inquiry Officer but he did not adjourn the proceedings. The case of the workman is squarely covered by the law cited above.

It has been held Laxmidhar Naik Vs. Union of India, (1987) 2 ATC 945 that ex-parte inquiry is not valid.

“Where a medical certificate of his illness was filed on the third hearing requesting for adjournment, but the Inquiry officer, proceeded ex-parte.”

It has been held in Gajendra Pal Sharma Vs. Union of India (OA-1005/86 dt.d.3-1-1992 – P.B.) Upheld by the Supreme Court in Civil Appeal No. 4226 of 1992 decided on 11-8-1994 that the ex-parte inquiry is not valid.

“Where a petition alleging bias of the Inquiry Officer was pending with the competent departmental authority but the Inquiry Officer continued with the proceedings, though he had the due notice. Further, the Inquiry Officer rushed through the case, ex-parte ignoring the medical certificate issued by Dr. Ram Manohar Lohia Hospital, New Delhi.”

It has been further held that even in ex-parte proceedings, an Inquiry Officer is dutybound to :—

- (i) call upon the presenting officer to present the evidence by which he proposes to prove the articles of charge.
- (ii) pass an order asking the charged employee to inspect the documents in support of the charges and also to submit his list of defence documents and witnesses.
- (iii) fix dates for regular hearings and send intimation to the charged employee. In some exceptional case where it is not possible to communicate with him through regular channels, a notice for ex-parte proceedings indicating the dates of hearing may be published in the Gazette or any local paper.
- (iv) examine the witnesses himself during the Inquiry proceedings and test their veracity in the absence of the delinquent officials. In the absence of the witness, the statement recorded in preliminary inquiry cannot be relied upon even in ex-parte proceedings.
- (v) allow the charged officer to participate in the proceedings at any stage but it shall not be necessary to repeat the proceedings already taken lawfully. However, if he so desires, copies of the depositions of witnesses examined in his absence may be supplied to him.

In the instant case the workman has sent applications to the Disciplinary Authority regarding the biasedness of the Inquiry Officer. The Inquiry Officer was in the know of the fact but the Inquiry Officer rushed hastily ex-parte ignoring the medical certificate. In the circumstances the Hon'ble Supreme Court has set aside the ex-parte proceedings.

It was submitted from the side of the management that the workman has used very obscene and vulgar language to the Branch Manager, Shri Fateh Singh Jaspal on 3 occasions and he made complaints on the same day

3 chargesheets have been issued to the workman on the complaints of Shri Fateh Singh Jaspal, the Branch Manager.

Shri Fateh Singh Jaspal has been examined by the management and he has admitted that he received letter dated 07-07-1989, 12-07-1989 and 27-07-1989. These letters have been sent to the Regional Manager by the workman as he was threatened by Shri Fateh Singh Jaspal to teach him a lesson that something he did not elaborate. It has been further mentioned in this letter that Shri Fateh Singh Jaspal revealed to the workman that he has instructions to implicate the workman in some case and he has been assigned the duty of collecting material to implicate the workman. It is in this context the workman wrote to the Regional Manager for his being falsely implicated. Shri Fateh Singh Jaspal during his cross-examination admitted the receipt of 2 letters sent to the Regional Manager and the management has also admitted these documents.

These letters pertain to 7-7-1989, 12-7-1989 and 27-7-1989. These letters prove beyond doubt that atleast Shri Fateh Singh Jaspal was prejudiced against the workman and he disclosed to the workman that he has been assigned the job of implicating the workman falsely.

It is peculiar that Shri Fateh Singh Jaspal is the only complainant in all the 3 charges. In the charge-sheet dated 20-9-1989 the incidents dated 14-8-1989, 26-8-1989, 30-8-1989 and 31-8-1989 referred to above.

The sole complainant is Shri Fateh Singh Jaspal and the workman uttered vulgar words. These words can be uttered only by a man of perverted mind no doubt and these words cannot be reproduced in this award, but the substantial question is whether these words were uttered by the workman to Shri Fateh Singh Jaspal or these words are the concoction of the brain of Shri Fateh Singh Jaspal as he was instructed to implicate the workman falsely and he was collecting materials and he collected the materials and created the indecent language.

It is also peculiar in this case that the workman used abusive language to Shri Fateh Singh Jaspal on 14-8-1989, 26-8-1989, 30-8-1989 and 31-8-1989 in the bank premises.

It is also peculiar that the obscene language was used by the workman to Shri Fateh Singh Jaspal in the bank premises but there is no eye witness. Shri Fateh Singh Jaspal is the sole complainant and the Inquiry Officer examined him alone in the absence of the workman and found the charges proved.

It is common sense view that when a workman used abusive language to his superior it must be heard in the premises by the other employees but no employee has come to evidence about using valgur and abusive language by the workman. On the first occasion of the evidence of the Disciplinary Authority Shri Upkar Singh evidence of Shri Fateh Singh Jaspal and on the next occasion when

fresh evidence was taken after the remand of the Hon'ble High Court there is absolutely no eye witness in this case. The vulgar words have been uttered to Shri Fateh Singh Jaspal and he is the lone witness whereas the complaint regarding the conspiracy to falsely implicate the workman has been sent in the month of July and the workman uttered the vulgar words to Shri Fateh Singh Jaspal on 4 occasions in August, 1989 just after a month after the complaint of the workman. In the circumstances it cannot be said that the workman prepared the ground for abusing the Branch Manager, Mr. Fateh Singh Jaspal.

It is settled law that guilt can be held proved on the basis of hearsay evidence but in this case even there is no hearsay evidence.

The Inquiry Officer has not discharged his duties properly. Mr. Fateh Singh Jaspal confirmed his 3 complaint letters before the Inquiry Officer and he found the charges proved.

From perusal of the above letter it becomes quite obvious that the Inquiry Officer is duty bound even in ex parte proceedings to inquire from the witness regarding the allegations. In the instant case the Inquiry Officer even has not asked the workman to elaborate the allegations containing in his letters. The witness confirmed his complaint and the Inquiry Officer held it proved.

In the instant case animosity between Mr. Fateh Singh Jaspal and the workman is proved by the complaints of the workman mentioned above. Shri Fateh Singh Jaspal was the sole complainant and he could not even produce any of the employee under him regarding these allegations. The Inquiry Officer hastily concluded the inquiry proceedings after 3 dates. I gave the award on 26-3-2004 in view of the law cited above in proof.

It was submitted from the side of the management that the other 2 charges have also been found proved. No importance can be given to subsequent inquiry as complainant in other 2 inquiries is Mr. Fateh Singh Jaspal and the Inquiry Officer should have adopted the same process. The Inquiry Officer is biased and vindictive and he has hastily concluded the inquiry. The Inquiry Officer is not fair. The obscene and vulgar language appears to be an offshoot of the mind of Mr. Fateh Singh Jaspal as he disclosed to the workman that he has been assigned the duties of falsely implicating him. The disclosure was made in the month of July and there are complaints of the workman to the higher authorities regarding the conspiracy being hatched by Mr. Fateh Singh Jaspal against the workman. The management was duty bound in such circumstance to ascertain by preliminary inquiry regarding the truth of the incident. There is no preliminary inquiry. There is no other witness than the complainant Shri Fateh Singh Jaspal. The workman was aggrieved and the workman has made complaints against the evil designs to falsely implicate him. The complaints of the workman have been admitted by the

management and Mr. Fateh Singh Jaspal, so it appears that there is mastermind of Mr. Fateh Singh Jaspal in concocting the vulgar language as mentioned in his complaint. No man of prudence would utter such ugly words. Such ugly language can be prepared with a feeling of vengeance only.

It has been held by the Hon'ble Supreme Court in (1987) 2 ATC 945 that non adjournment of inquiry proceedings on submission of medical certificate vitiates the inquiry proceedings.

It has been further held by the Hon'ble Supreme Court in Gajendra Pal Sharma Vs. Union of India that in case there is allegation of biasedness against the Inquiry officer he should not proceed further. The workman has written to the Regional Manager regarding the biased attitude of the Inquiry Officer and the Inquiry Officer was in the know of the fact but still he concluded the inquiry ex parte. The Inquiry Officer has not discharged his duties of an Inquiry Officer in view of the judgment referred to above of the Hon'ble Supreme Court, Civil Appeal No. 4226/1992 decided on 11-8-1994.

The inquiry is held invalid and it is liable to be set aside and it is set aside. The punishment inflicted on the workman is also set aside.

In my award dated 26-03-2004, I have found the inquiry vitiates on the aforesaid reasons and the workman has been ordered to be reinstated with 50% back wages in the facts and circumstances of the case alongwith all the consequential benefits.

The reference is replied thus :—

The action of the management of Punjab and Sind Bank in dismissing the workman Shri Inder Pal Singh w.e.f. 25-5-1991 is not justified. The management should reinstate the workman alongwith 50% backwages w.e.f. 25-5-1991 with continuity of service and all the consequential benefits within two months from the date of the publication of the award.

The award is given accordingly.

Date : 13-6-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 19 जून, 2007

का.आ. 1986.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 116/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-6-2007 को प्राप्त हुआ था।

[सं. एल-12012/91/2000-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 19th June, 2007

S.O. 1986.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No: 116/2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 18-6-2007.

[No. L-12012/91/2000-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Presiding Officer : R.N.Rai

I. D. No. II6/2000

In the matter of :—

Shri Som Pal,
S/o Shri Kotia,
Village & P. O. Aithal,
Distt : Haridwar,
Uttarakhand

Versus |

Indian Overseas Bank,
Subhash Gargh,
Distt : Haridwar,
Uttarakhand.

Regional Manager,
Indian Overseas Bank,
Regional Office, LIC Building,
Opp. Ch. Charan Singh University,
Garh Road,
Meerut City (U. P.)
AWARD

The Ministry of Labour by its letter No. L-12012/91/2000-IR(B-II) Central Government Dt. 18-10-2000 has referred the following point for adjudication.

The point runs as hereunder : —

"Whether the action of the management of Indian Overseas Bank, Subhashgarh, Dehradun in discontinuing terminating the services of Shri Sompal, Ex. Temporary Sweeper w.e.f. 16-10-1997 is legal and justified? If not, what relief the concerned workman is entitled to?"

The Workman applicant has filed claim statement. In the claim statement it has been stated that the respondent/management is carrying on the business of banking and earning profit all over India and the workman was posted in District Haridwar.

That the respondents are governed by the provisions of ID Act, 1947.

That the workman was engaged as Safai Karamachari and he was not assigned any supervisory duty so he is a workman under the provision of ID Act, 1947.

That the workman was appointed against absolutely a permanent and vacant post of Safai Karamachari on 18-9-1991.

That the workman was discharging duties to the satisfaction of all the officers and employees of the bank.

That the services of the workman were terminated without payment of retrenchment compensation on 16-10-1998.

That in addition to the work of Safai the workman performed the duties of peon also and complied with all the orders and directions of the respondent/management.

That the workman was terminated from his duties in May, 1995 as he was absent due to illness. The management did not behave with humanitarian attitude against the workman in view of his illness.

That the workman was again engaged by the management on the post of Safai Karamachari on 19-8-1997.

That no chargesheet was served on the workman and no inquiry was held.

That the workman has worked continuously from 18-9-1991 to 18-10-1998 and he has worked for 240 days preceding the year of termination of his services.

That the termination of the services of the workman without payment of any retrenchment compensation is illegal and arbitrary.

That the workman was performing a permanent nature of job and the duty of the Safai Karamachari is always required by the management.

That the workman deserves to be reinstated taking the entire period of his work as continuous duty. That the workman is out of employment since his termination.

The Management has filed written statement. In the written statement it has been stated that the petitioner is not a workman as defined u/s 2 (s) of the Act. He was employed as a part time sweeper on temporary basis and was being paid on daily wages fixed fee of Rs. 20 per day for one hour job and was thus a casual labour. Therefore, the claim of the petitioner is not maintainable under the Act liable to be rejected forthwith.

That no industrial dispute u/s 2(k) of the Act exists between the petitioner and management because the petitioner is not a workman under the Act.

That the claim of the petitioner does not fall u/s 25-B of the Act as he is not a workman and has not put in 240 days service during the period from November, 1997 to October, 1998. Therefore the same is liable to be rejected.

That there is no master and servant relationship between the applicant and the respondent because the applicant serves other employers as part-time sweeper as well.

It is denied there exists any industrial dispute between the petitioner and the management which is maintainable before the Hon'ble tribunal. The averments are misconceived and liable to be rejected forthwith.

It is categorically denied that the petitioner is a workman as defined under the Act or that an industrial dispute exists between the petitioner and management. It is submitted that the applicant was part time sweeper engaged on purely temporary basis to sweep the premises for about one hour a day and was being paid @ Rs. 20 per hour per day. The averments are baseless, misconceived and liable to be rejected. The submissions made in preliminary objection, are reiterated.

It is denied that the petitioner was appointed on adhoc basis against permanent post as sweeper on 18-9-1991. It is submitted that the petitioner was engaged on 18th September, 1991 purely on temporary basis depending upon requirement and exigencies of work. The petitioner performed and discharged duties upto 13-6-1995. Thereafter he himself stopped coming and attending to his duties as a temporary sweeper. Vide letters dated 26-6-1995; 12-7-1995 and 5-8-1995 the management approached the petitioner to resume his duties but he discontinued from the service of his own will and accord and some other person was engaged in his place on casual/temporary basis. Thereafter in August, 1997 after a gap of more than 2 years the petitioner again approached the Management for being provided with the same job. Upon the persistent requests of the petitioner, the Management kept him on a purely temporary/casual capacity and on purely part time, temporary and on casual basis at the rate of Rs. 20.00 per hour per day at the time of discontinuation. The petitioner, continued to engage himself in his personal work, applied loan from the Bank for his use in business of a cloth merchant. The averments of the petitioner are false, frivolous and baseless and liable to be rejected.

It is denied that the petitioner was working to the satisfaction of the management. None of the staff members was happy with his work as at his convenience he used to absent himself from his duties and as a result every person of the branch as well as customer/public used to be uncomfortable due to dirt and dust in the branch. The averments are baseless and liable to be rejected.

It is submitted that as per terms of his recruitment no notice is required to be served upon him to remove him from Bank's service. The provisions of Industrial Dispute Act 1947 does not apply in petitioner case as he had never worked for 240 days continuously in any previous year before 16-10-1998 i.e. the date of discontinuation. There are baseless averments and liable to be rejected. The submissions made in preliminary objections are reiterated.

That contents, contentions and assertions contained in para 8 of the petition are wrong and denied. It is denied that the petitioner worked as a sweeper against a permanent post and that the management used to avail his service as that of a clerk. It is submitted that the petitioner has worked only as a temporary sweeper and that he never worked more than an hour a day. The Management was never satisfied with petitioner work and conduct.

It is denied that the petitioner was denied work in 1995. The fact is that the petitioner used to keep himself on unauthorized absence without any notice of the Management. On 16-6-1995 the petitioner opted to keep himself away from the work without any notice to the Management. The Management waited for 10 days for his return to the work and thereafter Management sent registered notices to the petitioner residence to report for duty vide letters dated 26-6-1995; 12-7-1995 and 5-8-1995. When the petitioner had not responded any of the notices, then the Management had no option but to engage another sweeper to clean the branch office. After more than two years, the petitioner again approached the Management and assured good work and conduct in future. Keeping in view his request, the Management allowed the petitioner one more chance and he was given sweeping work since 19-8-1997. The submissions made in above paras are reiterated.

It is submitted that as per terms of appointment workman services can be terminated any time without assigning any reason or notice. He is a casual labour, therefore, serving notice and conducting any enquiry are not applicable.

That contents, contentions and assertions contained in para 11 of the petitions are wrong and denied. It is denied that the petitioner had worked in the Bank continuously since 18-9-1998. The petitioner had never worked for 240 days continuously in any of the preceding year. The averments are baseless and liable to be rejected forthwith.

It is submitted that the petitioner is a casual labour and not a workman under the Act. Therefore, provisions of the Act are not applicable to the petitioner, hence no compensation is required to be paid by the management and none of the provisions of law were overlooked. The averments are misconceived and liable to be rejected.

It is denied that the petitioner has been removed from services illegally. The petitioner has never worked continuously since 18-9-1991. The petitioner was removed from the services on account of his unsatisfactory services as well as unwanted and unwarranted conduct, character and attitude. Therefore the petitioner is not fit for the job in the Bank.

It is denied that after removal from the job, the petitioner had become employed. Keeping in view of his past relations, the Bank had granted the petitioner a loan for Rs. 20,000-00 for readymade garments shop. Besides

this the petitioner had been working under the other employer as sweeper in the residential house of the village.

It is evident that the petitioner is neither a workman nor any dispute between the petitioner and the respondent exists. The petitioner was not connected with any of the banking functions. During his tenure the petitioner was in the habit of keeping himself on unauthorized absence without any notice to the Bank with the result the Bank used to face lot of inconvenience to get another sweeper for cleaning the branch premises. The respondent had advised the petitioner number of times for being regular in his job but every effort of the Bank was made futile.

Keeping in view of above, the petitioner claim before this Hon'ble Tribunal is not maintainable and liable to be rejected.

The Management therefore most respectfully prays that the claim of the petitioner may kindly be rejected forthwith with heavy costs as the same is legally not maintainable.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that he worked continuously from 18-9-1991 to 15-10-1998. The services of the workman were dis-continued in view of his illness. He approached the management and the management again engaged him on 19-8-1997 and he worked up to 15-10-1998. His services were illegally terminated on 16-10-1998 without payment of retrenchment compensation and one month's pay in lieu of notice.

It was further submitted that the workman has worked for 240 days from 19-8-1997 to 15-10-1998. He has not been paid any retrenchment compensation and one month's pay in lieu of notice.

It was further submitted that it has been admitted by the management that the workman was engaged as casual labour on 18-9-1991 and he worked up to April, 1995 and thereafter the workman did not join duty as he was ill and his services were terminated on the ground of his unavailability.

It was further submitted that the management has filed chart Annexure-B-143 and it has been admitted that the workman worked for 64 days in 1996-1997 and 213 days in 1997-1998. The Sundays and holidays have not been calculated by the management. In case Sundays and Holidays are calculated the workman has performed more than 240 days work during 1997-1998 and his services were terminated without payment of retrenchment compensation and one month's pay in lieu of notice.

It is true that Sundays and Holidays are to be calculated while calculating the working days. In case Sundays and Holidays are calculated the working days from November, 1997 to October, 1998 will come to more than 240 days.

It was submitted from the side of the management that the workman was engaged as casual labour for cleaning and sweeping the toilet in 1991 but the absented himself from duty in May, 1995 and 3 notices dated 26-5-1995, 12-7-1995 & 5-8-1995 were sent to him. He did not turn up, so another workman in his place was engaged for sweeping and cleaning to toilet.

It was further submitted that the workman applied for loan of Rs.20,000 on 18-10-1997 for trade of Ready-made Garments and he was sanctioned Rs.20,000 i.e.m. The workman filled up the form himself and he has signed it and he has declared himself unemployed.

It was submitted that the workman was engaged casually only for cleaning and sweeping the toilet of the Bank office. There was no necessity of engaging part time sweeper as the office was very small and the toilet was to be cleaned only once during the 24 hours in the morning. He attended his duties of sweeping and cleaning the toilet and he went away. He performed such duties in various places i.e. the workman has made declaration in the form of loan that he was not employed anywhere else. The documents regarding loan are attached with the records and it has not been denied by the workman.

It was further submitted that in the absence of the workman another casual labour was engaged for one hour for cleaning and sweeping the toilet and he was paid Rs. 10 sometimes Rs. 15 on the days he swept the office and cleaned the toilet. The management has attached the vouchers. The voucher show that the workman was paid @Rs. 10 per day and it has been mentioned in the vouchers that the payments were made as expenses of cleaning and sweeping.

It was further submitted that thereafter the amount was enhanced to Rs. 15 per day and the workman performed only the work of sweeping and cleaning and he went away and discharged the same duties at other places also.

It was further submitted that the workman joined some other duties and he did not turn up in the month of May, 1995 so another person was engaged. The workman himself abandoned his work and another workman was engaged, so there is no question of payment of retrenchment compensation to the workman.

It is true that in case a workman abandons his service he is not entitled to any retrenchment compensation. The management has sent 3 letters asking the workman to resume the duties but the workman failed to do so.

It was further submitted that in the absence of the workman Mr. Madan Lal was engaged from December, 1996

to June, 1997 and one Mr. Gopal from July, 1997 to August, 1997. These workmen have also been paid @Rs.15 per day. The management has attached the vouchers regarding payment of Madan Lal. Madan Lal was initially paid @ Rs.10 in 1997. The amount was raised to Rs. 20 during his last working days.

It was further submitted that the workman has been performing duties at some other places and he has received the amount through cheque. The cheques have been annexed with the records.

In case the workman performs 240 days as whole timer he is entitled to retrenchment compensation and one month's pay in lieu of notice but he has to establish that he has discharged duties during the entire office hours.

In the present case the workman has filed vouchers relating to Safaiwork only. It has been mentioned specifically that the amount of Rs. 10, 15 & 20 have been paid as expenses of sweeping and cleaning. It has nowhere been mentioned that the workman performed any other duty except sweeping and cleaning. The workman has not filed any document to show that he was engaged for office work also. He has filed only vouchers and it has been specifically mentioned in the vouchers that the amount is being paid as expenditure of sweeping and cleaning. No payment for any other work has been made to the workman and the workman has no evidence to that effect, so it is held that the workman performed the work of sweeping and cleaning only in the premises of the bank only for almost 1 (one) hour. It is also found proved that the workman discharged such duties at several other places.

The workman was paid not more than Rs. 250-260 during his initial service period. No workman can work on this amount for the whole day. In 1997 -98 the workman has been paid @Rs. 20 for safai work. It will not amount to more than 450-500. No workman would get himself engaged for the entire day at Rs.450-500. The fact is that the workman swept and cleaned several places in the morning. He was not a part timer as no letter has been issued to him as part time work. There is specific provision for employment of part time Safai Karamchari in the BPS. They are engaged for half day at consolidated sum of pay. The workman is not a part timer. He was engaged for sweeping the office and cleaning the toilet in the morning before office hours and thereafter he left the place and did the same work at other places. In such circumstances the work of 240 days does not carry much meaning. The workman performed his specific job initially on Rs.10 per day and it was enhanced to Rs.15-20. He is not a part timer or casual worker. No office can afford to engage a sweeper for the whole day for sweeping and cleaning only small premises.

Even at present the management has engaged sweeper in that capacity. Such workman can be deemed only as worker on contractual basis and they get payment for the work done by way of sweeping and cleaning of the

premises for an hour and they are not entitled to retrenchment compensation and reinstatement.

The reference is replied thus:—

The action of the management of Indian Overseas Stone, Bahashigarth, Behradun in discontinuing/termination the services of Shri Sompal, Ex Temporary Sweeper on f. 16-10-1997 is legal and justified. The workman applicant is not entitled to get any relief as prayed for.

The award is given accordingly.

Date: 14-06-2007. R. N. RAI, Presiding Officer

इद दिलसी, 19 जून, 2007

का.व्या. 1987.—ऑपोर्टिक विवाद अधिनियम, 1947 (1947 का 14) द्वी प्रति 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधसंत्र के रांबड़ नियोजकों और उनके कर्मकारों के संघ, अनुबंध में निर्दिष्ट (ऑपोर्टिक विवाद में केन्द्रीय सरकार, ऑपोर्टिक अधिकरण/अमाध्यायलय, तखनउ के पंचाट (संदर्भ संख्या 103/2004) को प्रकाशित करते हैं, जो केन्द्रीय सरकार को 19-6-2007 का प्राप्त हुआ था :

[र. एल-40012/46/2004-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th June, 2007

S.O. 1987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workmen, which was received by the Central Government on 19-6-2007.

[No. L-40012/46/2004-JR(DU)]

SURENDRA SINGH, Desk Officer

**ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW**

PRESENT

Shrikant Shukla : Presiding Officer

I.B. No. 103/2004

Ref. No. L-40012/46/2004-JR(DU)

Dtd. 5-10-2004

BETWEEN

Sh. Sachinder Kumar s/o Sh. Sudarshan
R/o Sarawat Nagar,
Distt. Bahraich-271865

Awd

The Chief General Manager,
Telecommunication East,
Lucknow/The Principal General Manager,
Pee Key Bhawan,
Lucknow

The Telecom District Manager,
Telecom Deptt. BSNL,
Behraich-271865

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following dispute vide No. L-40012/46/2004-JR(DU) Dated 5-10-2004 for adjudication to the Presiding Officer, CGIT-cum-Labour Court, Lucknow;

"WHETHER THE ACTION OF THE MANAGEMENT OF BHARAT SANCHAR NIGAM LTD. BEHRAICH IN TERMINATING THE SERVICES OF SRI SACHINDER KUMAR S/o SRI SUDARSHAN, DAILY LABOUR W.E.F. 31-7-01 IS LEGAL AND JUSTIFIED ? IF NOT TO WHAT RELIEF THE WORKMAN IS ENTITLED ?"

Worker's case in brief is that he has joined his services as daily wager casual labour (class IV post) in August 1998 in serious exigencies of departmental work since then he has been working with the said post for more than 240 days of service in the preceding year and Telecom District Manager, Bahraich has terminated his services without any valid reason absolutely in illegal, arbitrary, malafide and discriminatory manner without holding any opportunity of hearing to the worker. Worker has accordingly prayed that the court should direct to Telecom District Manager, Bahraich to take back the worker in service and pay him wages and other consequential benefits in the interest of justice.

Sri Ram Charan posted as Divisional Engineer (HQ) in the office of TDM, Bahraich who is authorised to file written statement on behalf of opposite parties have filed the written statement. Denying the claim the opposite party he has stated that worker was never appointed by the opposite parties to any class IV post nor he was engaged as daily labour in 1998. Thus, there was no question of having completed 240 days in the service by the worker. It is also submitted that if the worker was appointed by the opposite party to a post a formal appointment letter would have been issued to the worker at that point of time Bharat Sanchar Nigam Ltd. had not come into existence and it was a department of Ministry of Telecommunication. So far as the engagement of Workmen on daily wages is concerned it is submitted that there was a complete ban on the engagement of fresh casual labourer/daily wagers in the department with effect from 12-6-88. It is also submitted that casual labourers were earlier engaged by the department on muster roll but after putting a ban on the engagement of the casual labourer/daily wagers by means of an order

w.e.f. 12-6-88 which was later on circulated vide letter dt. 12-2-99 no fresh labourer is being engaged on muster roll. Worker has not worked with opposite party.

Worker did not turn up though various opportunities were given to the worker for producing his evidence but when worker did not appear on 18-7-06 then it was observed that worker is avoiding to produce his evidence accordingly the worker was ordered to produce all evidence of its witness in form of affidavit within 15 days after sending the copies to the opposite party and produce all the witness for cross examination on 17-8-06. Worker was also warned and in case of default the case shall proceed for recording the evidence of opposite party. On 17-8-06 the worker again did not turn up instead an application was moved by the representative of the worker stating that applicant is unable to appear for evidence due to sudden illness. Worker too did not turn up however, the case was adjourned to 25-8-06 and worker was again directed to file the affidavit of its evidence by 25-8-06. But on 25-8-06 and on subsequent date i.e. 15-9-06 the worker did not turn up and only representative of the opposite party appeared therefore the court ordered the case proceed ex-parte against the worker and 6-10-06 as fixed for opposite party evidence.

On 6-10-06 opposite party filed the affidavit of Sri Ram Charan.

Opposite party has also filed his written argument on 5-12-06.

Perfused written argument and evidence on record.

According to the reference order the court was to adjudicate "Whether the action of the management of Bharat Sanchar Nigam Ltd., Behraich in terminating the services of Sri Sacchinder Kumar S/o Sri Sudarshan, Daily labour w.e.f. 31-7-01 is legal and justified ? If not, to what relief the workman is entitled ?"

The workman was required to prove that he was appointed as daily wager in August 1998 and his services were terminated on 31-7-01 and that he has completed 240 days work immediately preceding 31-7-01 in 12 calendar months. The burden was on the worker but the worker has not come forward to prove by satisfactory evidence that he was engaged as daily wager casual worker in 1998 and he was terminated by the management. The opposite party has proved by affidavit that worker was neither appointed by the opposite party to any class IV post or he was engaged as daily wager/casual labour in 1998. It is also proved that no orders have been passed for appointment/engagement of the worker by the competent authority to erstwhile of Ministry of Telecommunication. Opposite party has also prove that there was complete ban on engagement of fresh casual labour w.e.f. 12-6-88. It is also proved that Sub Divisional Officer of the Telecom department was not competent authority to engage any daily wager without approval of

the competent authority. The Divisional Engineer has proved fact said copy of the document annexed by the worker with the claim statement of engagement are not genuine documents. In the circumstances I come to the conclusion that worker has not discharged his burden to the effect that he was engaged and subsequently terminated on 31-7-01 by the management of Bharat Sanchar Nigam Ltd. He has also not proved that he actually worked for 240 days in the calendar year immediately preceding the date of termination. Award passed accordingly and the worker is not entitled to any relief.

Lucknow 12-6-2007

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 19 जून, 2007

का.आ. 1988.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन वैटरिनेरी रिसर्च इंस्टीट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 68, 70, 71, 75, 76, 77, 82, 162, 163, 164, 187, 188, 189, 192, 193, 195, 199, 200, 204, 166, 72, 80, 185, 194, 196, 206, 184, 69, 190, 186/2000 और 5/2001 के प्रकाशित करती है, जो केन्द्रीय सरकार को 19-6-2007 को प्राप्त हुआ था :

[सं. एल-42012/71 से 74 तक/2000-आई आर (डी.यू.)

एल-42012/76, 78/2000-आई आर (डी.यू.)

एल-42012/52 से 57 तक /2000-आई आर (डी.यू.)

एल-42012/142 से 147 तक/2000-आई आर (डी.यू.)

एल-42012/149/2000-आई आर (डी.यू.)

एल-42012/156 से 161 तक/2000-आई आर (डी.यू.)

[एल-42012/163, 165, 166, 167, 187, 188/2000- आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th June, 2007

S. O. 1988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68, 70, 71, 75, 76, 77, 82, 162, 163, 164, 187, 188, 189, 192, 193, 195, 200, 204, 66, 72, 80, 185, 194, 196, 206, 184, 69, 190, 186/2000 & 5/2001) Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Veterinary Research Institute and their workman, which was received by the Central Government on 19-6-2007.

[No. L-42012/71 to 74, 76, 78, 52 to 57/2000-IR(DU)

L-42012/142 to 147, 149, 156, to 161/2000-IR(D-U)

L-42012/163, 165, 166, 167, 187, 188/2000-IR(D-U)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW**

PRESENT:

SHRIKANT SHUKLA, Presiding Officer

I. D. No. 68/2000**Ref. No. L-42012/74/2000-IR (DU) dated 31-7-2000****BETWEEN**

Shri Mohan Lal S/o Shri Khyali Ram,
R/o Kuandada, PO-Valipur Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

2. I.D. No. 70/2000**Ref. No. L-42012/78/2000-IR (DU) dated 31-7-2000****BETWEEN**

Shri Bhawan Prakash S/o Shri Sunder Lal
R/o Nogana Ghatampur, PO-Madauli
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute
Izat Nagar, Bareilly (UP)-243001.

3. I.D. No. 71/2000**Ref. No. L-42012/56/2000-IR (DU) dated 31-7-2000****BETWEEN**

Shri Hem Raj S/o Shri Bulakhi Ram
R/o Kundada Kurmiavan, PO-Valipur
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

4. I.D. No. 75/2000**Ref. No. L-42012/55/2000-IR(DU) dated 31-7-2000****BETWEEN**

Shri Daya Ram S/o Shri Banshi Lal,
R/o Kuandada, PO-Valipur Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

5. I.D. No. 76/2000**Ref. No. L-42012/53/2000-IR (DU) dated 31-7-2000****BETWEEN**

Shri Vijay Pal S/o Shri Cheda Lal,
R/o Kuandada PO Valipur
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

6. I.D. No. 77/2000**Ref. No. L-42012/52/2000-IR (DU) dated 31-7-2000****BETWEEN**

Shri Mahendra Pal S/o Shri Nand Ram,
R/o Kalara, PO-Bhairpur
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

7. I.D. No. 82/2000**Ref. No. L-42012/73/2000-IR (DU) dated 3-8-2000****BETWEEN**

Shri Sewa Ram S/o Shri Balaram ,
R/o Tiyulia, PO-Tiyulia
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

8. I. D. No. 162/2000**Ref. No. L-42012/149/2000-IR(DU) dated 10-10-2000****BETWEEN**

Shri Tota Ram S/o Shri Bela Ram,
R/o Teulia, PO-Teulia
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

9. I. D. No. 163/2000**Ref. No. L-42012/163/2000-IR(DU) dated 10-10-2000****BETWEEN**

Shri Ram Pal S/o Shri Roshan Lal,
R/o Pareva Kurmiyan, PO-Senthal
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

10. I. D. No. 164/2000

Ref. No. L-42012/165/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Har Prasad S/o. Shri Tula Ram,
R/o Pareva Kurmian, PO-Senghal
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

11. I. D. No. 187/2000

Ref. No. L-42012/155/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Sunil Kumar S/o. Shri danial Benjamin,
R/o Parikshit Nagaria, Defence Colony
Izat Nagar, Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

12. I.D. No. 188/2000

Ref. No. L-42012/144/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Puttan Khan S/o. Shri Jameel Khan,
R/o Ananta, PO-CBJ
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

13. I.D. No. 189/2000

Ref. No. L-42012/143/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Deen Dayal S/o. Shri Ganga Ram,
R/o Jafar Pur, PO-Mauji Pura
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

14. I.D. No. 192/2000

Ref. No. L-42012/157/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Siya Ram S/o. Shri Buddh Sen,
R/o Pareva Kurmiyan, PO-Senthal
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

15. I.D. No. 193/2000

Ref. No. L-42012/158/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Balak Ram S/o. Shri Bulaki Ram,
R/o Chhota Bihar,
Izzat Nagar, Bareilly (UP)-243001

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

16. I.D. No. 195/2000

Ref. No. L-42012/160/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Babu Ram S/o. Shri Ganga Ram,
R/o Pipal Sana Chaudhari PO-Mauji Pura
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

17. I.D. No. 199/2000

Ref. No. L-42012/166/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Sanjay Tiwari S/o. Shri R. K. Tiwari,
R/o Defence Colony, Air Force Gate
PO-Izat Nagar
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

18. I.D. No. 200/2000

Ref. No. L-42012/167/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Ramesh Chand S/o. Shri Shyam Lal,
R/o Ramiya Pur, PO-Khurla
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

19. I.D. No. 204/2000

Ref. No. L-42012/187/2000-IR (DU) dated 31-10-2000

BETWEEN

Shri Ram Swaroop S/o. Shri Sunder Lal,
R/o Pareva Kurmiyan PO-Nawab Ganj
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

20. I.D. No. 66/2000

Ref. No. L-42012/76/2000-IR (DU) dated 31-7-2000

BETWEEN

Shri Mohar Singh S/o. Shri Behari Lal,
R/o Mohan Pur urf Ram Nagar PO-University
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

21. I.D. No. 72/2000

Ref. No. L-42012/57/2000-IR (DU) dated 31-7-2000

BETWEEN

Shri Krishan Kumar S/o Shri Kundan Lal,
R/o Mohan Pur urf Ram Nagar, PO-University
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

22. I.D. No. 80/2000

Ref. No. L-42012/54/2000-IR (DU) dated 31-7-2000

BETWEEN

Shri Chet Ram S/o Shri Khyali Ram,
R/o Kuandada, PO-Valipur
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

23. I.D. No. 185/2000

Ref. No. L-42012/147/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Jawahar Lal S/o Shri Ram Charan Lal,
R/o Patti Beharipur PO-Maujipara
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

24. I.D. No. 194/2000

Ref. No. L-42012/159/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Om Pal S/o Shri Mohan Lal,
R/o Pareva Kurmian, PO-Santhal
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

25. I.D. No. 196/2000

Ref. No. L-42012/161/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Ram Awtar S/o Shri Deen Dayal,
R/o Bujhia, PO-Bhojipura
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

26. I.D. No. 206/2000

Ref. No. L-42012/188/2000-IR (DU) dated 31-10-2000

BETWEEN

Shri Harswaroop S/o Shri Dhani Ram,
R/o Pareva Kurmian, PO-Sathal
Bareilly (UP)

AND

The Director

Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

27. I.D. No. 5/2001

Ref. No. L-42012/71/2000-IR (DU) dated 21-11-2000

BETWEEN

Shri Payare Lal S/o. Shri Munna Lal,
R/o Mohan Pur Ram Nagar, PO-University
Bareilly (UP)

AND

The Director
Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

28. I.D. No. 184/2001

Ref. No. L-42012/156/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Rajesh Kumar S/o. Sh. Shyamal,
R/o Subhash Nagar, Rajeev Colony
PO-Subhash Nagar
Bareilly (UP)

AND

The Director
Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

29. I.D. No. 69/2001

Ref. No. L-42012/72/2000-IR (DU) dated 31-7-2000

BETWEEN

Shri Bhim Sen S/o. Sh. Banshi Lal,
R/o Kuandada, PO-Valipur
Bareilly (UP)

AND

The Director
Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

30. I.D. No. 190/2001

Ref. No. L-42012/142/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Mool Chand S/o. Nathulal,
R/o Jafarpur, PO-Khanpur
Bareilly (UP)

AND

The Director
Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

31. I.D. No. 186/2000

Ref. No. L-42012/146/2000-IR (DU) dated 10-10-2000

BETWEEN

Shri Omkar S/o. Beniram,
R/o Chhoti Bihar, PO-Izat Nagar
Bareilly (UP)

AND

The Director
Indian Veterinary Research Institute,
Izat Nagar, Bareilly (UP)-243001.

AWARD

All reference order stated above were referred by the Government of India, Ministry of Labour for adjudication

of following schedules respectively to the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Lucknow.

1. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Mohan Lal S/o Sh. Khyali Ram, Ex-daily wager w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
2. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Bhawan Prakash S/o Shri Sunder Lal, Ex-daily wager w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
3. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Hem Ram S/o Shri Bulakhi Ram, Ex-daily wager w.e.f. 25-5-93 is legal and justified? If not, to what relief the workman is entitled and from which date?"
4. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Daya Ram S/o Banshi Lal, Ex-daily wager w.e.f. 16-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
5. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Vijay Pal S/o Sh. Chedalal, Ex-daily wager w.e.f. 24-8-91 is legal and justified? If not, to what relief the workman is entitled and from which date?"
6. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Mahendra Pal S/o Sh. Nand Ram, Ex-daily wager w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
7. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Sewa Ram S/o Sh. Bela Ram w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
8. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Totaram, Ex-daily wager w.e.f. 02-11-94 is legal and justified? If not, to what relief the workman is entitled and from which date?"
9. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in

- terminating the services of Sh. Rampal, Ex-daily wager w.e.f. 01-7-90 is legal and justified? If not, to what relief the workman is entitled and from which date?"
10. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Har Prasad, Ex-daily wager w.e.f. 29-11-87 is legal and justified? If not, to what relief the workman is entitled and from which date?"
11. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Sunil Kumar, Ex-daily wager w.e.f. 12-2-91 is legal and justified? If not, to what relief the workman is entitled and from which date?"
12. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Puttan Khan, Ex-daily wager w.e.f. 24-7-84 is legal and justified? If not, to what relief the workman is entitled and from which date?"
13. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Deen Dayal, Ex-daily wager w.e.f. 7-2-93 is legal and justified? If not, to what relief the workman is entitled and from which date?"
14. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Siya Ram, Ex-daily wager w.e.f. 7-1-92 is legal and justified? If not, to what relief the workman is entitled and from which date?"
15. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Balak Ram, Ex-daily wager w.e.f. 9-7-85 is legal and justified? If not, to what relief the workman is entitled and from which date?"
16. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Baburam Ex-daily wager, w.e.f. 1-6-94 is legal and justified? If not, to what relief the workman is entitled and from which date?"
17. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Sanjay Tiwari, Ex-daily wager, w.e.f. 11-4-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
18. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Ramesh Chand Ex-daily wager, w.e.f. 6-9-89 is legal and justified? If not, to what relief the workman is entitled and from which date?"
19. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Ramswaroop, Ex-daily wager, w.e.f. 1-7-90 is legal and justified? If not, to what relief the workman is entitled and from which date?"
20. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Mohar Singh S/o Sh. Behari Lal, Ex-daily wager, w.e.f. 1-1-91 is legal and justified? If not, to what relief the workman is entitled and from which date?"
21. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Krishna Kumar S/o Kundan Lal, Ex-daily wager, w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
22. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Chet Ram S/o Khyali Ram, Ex-daily wager, w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
23. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Jawahar Lal, Ex-daily wager, w.e.f. 18-10-94 is legal and justified? If not, to what relief the workman is entitled and from which date?"
24. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Ompal, Ex-daily wager, w.e.f. 13-10-93 is legal and justified? If not, to what relief the workman is entitled and from which date?"
25. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of their workman Sh. Ram Avtar, Ex-daily wager, w.e.f. 22-12-87 is legal and justified? If not, to what relief the workman is entitled and from which date?"
26. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Harswaroop, Ex-daily wager, w.e.f. 7-1-92 is legal and justified? If not, to what relief the workman is entitled and from which date?"
27. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in

- terminating the services of Sh. Pyarelal S/o Shri Munnalal, Ex-daily wager, w.e.f. 7-1-92 is legal and justified? If not, to what relief the workman is entitled and from which date?"
28. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of their workman Sh. Rajesh Kumar, Ex-daily wager, w.e.f. 23-11-90 is legal and justified? If not, to what relief the workman is entitled and from which date?"
29. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Bhim Sen S/o Sh. Banshi Lal, Ex-daily wager, w.e.f. 17-2-95 is legal and justified? If not, to what relief the workman is entitled and from which date?"
30. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Moolchand, Ex-daily wager, w.e.f. 11-5-94 is legal and justified? If not, to what relief the workman is entitled and from which date?"
31. "Whether the action of the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly in terminating the services of Sh. Omkar, Ex-daily wager, w.e.f. 16-5-90 is legal and justified? If not, to what relief the workman is entitled and from which date?"

All above disputes are taken together as the worker's engagement and termination is same times on different dates but the nature of point in issue and the employer is the same.

The worker's allegation is that the opposite party has vast area of about 1000 to 1300 acres land in which research development work is carried out and crops are grown for whole year and cattle of about 5000—6000 are also looked after by the management of the Indian Veterinary Research Institute which shall hereinafter be referred to as IVRI. The Director of IVRI is an employer of the workers who have espoused the dispute, which is in conformity with the provisions of the Industrial Disputes Act, 1947. IVRI is an educational and research institute where educational and research work is done throughout the year. The workers are engaged on Muster Roll basis for perennial work on daily wages basis. But workman is not allowed to make his signature on Muster Roll. The workers were initially duly selected and appointed/engaged as regular basis by the management of the Indian Veterinary Research Institute, Izat Nagar, Bareilly for performing regular and perennial work on different dates which will be discussed later on. The appointments were regular, mostly relating to the maintenance, the appointment was made for indefinite period till the attaining the age of superannuation. They were paid salary on monthly duration. All the worker involved in the case were paid daily wages. No appoint-

ments letters were given. The workers continued in service without any actual interruption, right from their appointment, yet the management made artificial interruption on record without any intimation to the workers and behind his back. sometimes they were allowed to sign on Muster Roll and sometime they were not allowed to sign on Muster Roll. This was done to deprive the workers of the benefits of continuance of service. Right from the initial appointment/engagement the workmen continued in the service all throughout and have completed several years of service. The management has, however, manipulated the record and has made artificial breaks at regular intervals but the same cannot effect the continuance of service of the workman. The services of the workers were terminated arbitrarily in the violation of provisions of Section 25 (F) of the Industrial Disputes Act, 1947. Even no sanction was obtained from appropriate authority/government. The employers also did not prepare any up to date seniority list of the daily wages employees and pasted the same on any conspicuous place a per requiremnt of Rule. Several juniors to the workers are still continuing being retained in service while workers have been thrown out of employment. It is also alleged that the employers are engaging the fresh hands and also are endeavouring to take work through the contractors by getting rid of the workman, which is wholly illegal and arbitrary. It has, therefore, been prayed to set aside oral termination of the workers along with consequential benefits and including full back wages.

The opposite party has denied the claim by submitting the written statement. The opposite party has stated that IVRI is not an industry and the workers are not industrial worker. Indian Council for Agricultural Research (ICAR), New Delhi is an autonomous body, registered under the Societies Registration Act, 1860 and it was set up for undertaking scientific research in agriculture, animal husbandry and allied subjects. The Union Minister of Agriculture, Government of India is the President of the Indian Council for Agricultural Research and the Director General of the Indian Council for Agricultural Research is also Secretary to the Government of India in the Department of Agriculture, Research and Education (DARE). It is submitted that the workers have not arrayed the Department of Agriculture, Research and Education and Indian Council for Agricultural Research or their employer as party in the cases under whose management and control research work is carried on in the institute. It is submitted that Fundamental and Supplementary Rules and all together services Rules etc. of the Government of India like Leave Rules, T.A. Rules, L.T.C. Rules, Pension Rules etc. have been made applicable to the employees of Indian Council for Agricultural Research and its various affiliated research institute spread all over the country, including the Indian Veterinary Research Institute, Izat Nagar, Bareilly. It is not disputed that Indian Council for Agricultural Research is carrying on education and research on the agricultural and

animal sciences through its research institutes/laboratories spread all over the country. The Indian Veterinary Research Institute is a research institute engaged in purely research work of public importance. It is an institution of Government discharging governmental function and not a domestic and commercial enterprise. Special grant in aid is received for meeting out the expenses of Indian Veterinary Research Institute. The Indian Veterinary Research Institute is not working with the aim of profit. The institute is not engaged in the trade or manufacture. It is also submitted that the purpose of research has been to maintain various departments and large farms, dairy etc. where work of casual/seasonal nature is done. In order to meet the temporary need casual/daily rated employees are engaged from time to time to meet the exigency of the work. The casual/daily rated/seasonal labours are engaged by the management exchange to the insure for casual engagement. Casual engagements are made when projects are sanctioned by the sponsors, whenever a project is sanctioned no permanent post is sanctioned with it. The Projects carried on with the help of casual engagements and these casual workers are paid from the Funds sanctioned for the Project. So fact as regular and permanent work is concerned the Institute has its own regular staff whose work and nature of duties and responsibilities are quite different from those of casual labours engaged by the institute to meet the exigency of the work. It is also submitted that so far as casual/daily rated/seasonal labours are concerned, there is no *inter se* seniority amongst them and they were purely engaged at the availability of work and their presence at the required place. According to the merits the casual labours assemble at the institute and they are given work, according to the exigency of the work. It is submitted that casual labours are engaged for work of casual or seasonal intermittent nature of work which is not of full time nature for which regular posts cannot be created in terms of ICAR letter No. 24-6/88-Cdm dated 16-9-1988. The casual labours are engaged for 40 days at a time, 100 days in six months or 200 days in a year. The workers have worked as casual labour in the Indian Veterinary Research Institute. The Indian Veterinary Research Institute had never issued any appointment letter or orders to the workers. The workers have no lien or right on any regular and permanent post in the Institute. The workers have never worked for 240 days in any calendar year or preceding 12 months in the institute. They have worked in different spells as and when required by the institute and have been made payments for the actual days they worked/engaged in the Institute as a casual labour, in the present reference order, "date of termination", has been incorrectly mentioned by the Central Government for adjudication. The present reference order is bad in law, vague, without jurisdiction and not maintainable under the Industrial Disputes Act, 1947. No termination order has been issued to the workers by the Indian Veterinary Research Institute. The engagement was for the fixed period and thereafter the

work under the engagement was come to an end. The management had never terminated the services of the workers as mentioned in the cases. The disengagement of the services of the workers cannot be treated as 'termination'. The workers were not governed by the Rules and Regulations of Indian Veterinary Research Institute. The workers were never interested in their casual/seasonal nature of duties. It is also submitted that different breaks in their casual job was due to the reasons that the workers did not turn up for casual work on such days it was due to the own fault of the workers. The engagement of the casual labours depends upon the question or work, capacity and quality of a person. It is also submitted that the claim filed by the workers is highly belated and overstate and it is not legally maintainable under the Industrial Disputes Act, 1947 and the claim of the workers is not covered by Sections 25B, 25F, 25G and 25 H of the Industrial Disputes Act, 1947.

It is also stated by the opposite party that all workers who come within the eligibility criterion laid down by the Government were given the benefits and the workers since not worked for 240 days in each of the two consecutive years and were not eligible for regularization. It is submitted that it is prerogative of the management to determine its labour force requirement at particular point of time and it is settled law that the courts do not interfere in the matter of appointment/engagement of labour force of an establishment. It is also submitted that the most of the workers filed the petition for regularization before Central Administrative Tribunal, Allahabad and by a common judgment dated 15-12-94 and 16-12-94 their cases were dismissed by the CAT and against the said judgment some of the workers had also moved a Special Leave Petition before the Hon'ble Supreme Court of India and same had also been dismissed *vide* order dated 7-8-1995. Thus, the workers have already availed the remedy in respect of regularization before the Hon'ble CAT and Hon'ble Supreme Court of India and cannot raise any demand in respect of regularization before this Tribunal. It is also submitted that this Tribunal cannot hear and decide the claim of the workers as the same shall be illegal, bad in law and without jurisdiction. The opposite party has accordingly submitted that the workers are not entitled to any relief as the action taken by the Indian Veterinary Research Institute, Bareilly is fully proper, legal, fair and justified and no rules of natural justice have been violated in the present case. All the workers have filed photocopies of certificates of the employment in the Indian Veterinary Research Institute together with following documents:—

1. Photocopy of certificate of working dated 4-6-87.
2. Photocopy of certificate of working dated 28-11-87.
3. Photocopy of certificate of working dated 04-01-89.

4. Photocopy of certificate of working dated 26-05-89.
5. Photocopy of Employment Card.
6. Photocopy of Caste Certificate.
7. Photocopy of Muster Roll.
8. Photocopy of Circular No. 4-4-94 MRDPC dated 2-5-1995.
9. Photocopy of advertisement of vacancies.
10. Photocopy of Quotation Notice.
11. Photocopy of Tender Notice.
12. Photocopy of office order of IVRI No. F 4-12/94-Legal Cell dated Feb., 97
13. Photocopy of office order of IVRI No. F 2-4/96/Estt./1386 dated 17-8-98.
14. Photocopy of office Memo dated 13-10-1983.
15. Photocopy of office Memo F. No. 49014/86-Estt. (C) dated 7-6-1989.
16. Photocopy of letter/guideline dated 16-9-88.
17. Photocopy of guidelines.
18. Photocopy of policy regarding recruitment of casual labour.
19. Photocopy of circular dated 8-8-94.
20. Photocopy of office Memo dated 10-9-1993.
21. Photocopy of scheme.
22. Photocopy of compromise.
23. Photocopy of News paper cutting.

The opposite party has filed in all cases photocopy of registration card for casual labour, which is marked as Ex. M-1 in all files. Such registration cards have photographs and signatures of the workers and their engagement particulars are written on its back.

The opposite party has also filed following documents:

1. Photocopy of circulars regarding guidelines of engagement of causal labourers.
2. Photocopy of circular No. F.1-1-94- Legal Cell dated 18th March, 1994 regarding Ban on engagement of fresh casual workers at IVRI Bareilly.
3. Photocopy of office memorandum dated 10-9-1993 regarding grant of Temporary status.
4. Photocopy of circular No. 24(15) 93-CDN dated 23-11-1994.
5. Photocopy of circular No. 24(19)/93-CDN dated 23-9-1994.
6. Photocopy of judgment of CAT, Allahabad dated 16-12-1994.

7. Photocopy of order of the Hon'ble Supreme Court of India dated 31-7-1995.
8. Photocopy of order of the Hon'ble Supreme Court of India dated 8-5-1995.

In all cases, which are taken up for disposal by common award, the workers have produced evidence by way of affidavit and the opposite party has filed affidavit of competent officer of Indian Veterinary Research Institute. The parties have cross-examined each other on the affidavits.

During the course of the proceedings the representatives of the parties made inspection of Muster Roll of the opposite party and the opposite party has submitted the detailed report of engagement in different years and the extract of same available in all the files.

All the cases have been clubbed together as the representative of the worker conceded the fact that the workers have not completed 240 days work in a calendar year. Facts and issues being common, all the cases have been clubbed together for disposal by a common award.

I have heard the representatives of the parties and carefully gone through the evidence of the parties.

At the outset the period of engagement as per the certificates filed by the workers, registration card. Ex. M-1, filed by the management and the Joint Inspection Report of Muster Rolls by the Parties is produced below:

ID No. 68/2000 Mohan Lal S/o Shri Khyali Ram

Worker's allegation is that the worker was appointed as regular labour w.e.f. 18-2-93 and continued as such. All of sudden the worker was not allowed to function w.e.f. from 17-2-95 without any rhyme or reasons, notice, notice pay or compensation. The management however, manipulated the record and has made artificial breaks at regular intervals. Worker has filed following certificates in support of his case.

Annexure-1	Certificate dated 22-5-93	Showing casual labour for following periods: 18-2-93 to 29-3-93, 1-4-93 to 10-5-93, 11-5-93 to 20-5-93
Annexure-2	Certificate dated 25-11-93	22-8-93 to 30-9-93, 3-10-93 to 11-11-93, 14-11-93 to 22-11-93

Worker has stated that last date on which he worked was 11-5-94. He has also stated no salary is due.

Ex. M1 filed by the management shows following engagements :

18-2-93 to 28-2-93	10 days
1-3-93 to 31-3-93	29 days
1-4-93 to 30-4-93	30 days
1-5-93 to 25-5-93	20 days
	89 days

22-8-93 to 31-8-93	10 days	25-2-90 to 5-4-90	
1-9-93 to 30-9-93	29 days	8-4-90 to 17-5-90	89 days
1-10-93 to 31-10-93	29 days	20-5-90 to 28-5-90	
1-11-93 to 22-11-93	20 days	28-1-91 to 8-3-91	
	<u>88 days</u>	11-3-91 to 19-4-91	99 days
1-4-93 to 30-4-94	30 days	23-4-91 to 10-5-91	
1-5-94 to 11-5-94	9 days	13-5-91 to 21-6-91	
	<u>39 days</u>	24-6-91 to 2-8-91	99 days
		5-8-91 to 23-8-91	
		7-2-91 to not mentioned	

Joint Inspection of muster rolls reveals following facts :

1. Worker has worked only 40 days in 1993.
2. Worker has worked only 69 days in 1994.
3. Worker has worked only 40 days in 1995, last day he worked on 16-2-95.

ID No. 76/2000 Vijay Pal S/o Shri Chheda Lal

Workman was duly appointed and engaged as regular labour w.e.f. 1-6-87 on daily wage basis and continuously worked as such till 24-8-91, the date on which he was not allowed to function. It is note worthy that no appointment letter was issued. Right from the initial appointment, management made artificial breaks. The workman has alleged that he was not given any reason, notice for disengagement not given any notice pay in lieu of notice and notice pay.

Workman has filed the affidavit and certificate of engagement as casual labour in support of his case :

Certificate dated	Duration of engagement
9-9-87	1-6-87 to 8-7-87 11-7-87 to 19-8-87 22-8-87 to 9-9-87
25-9-90	25-2-90 to 5-4-90 8-4-90 to 17-5-90 20-5-90 to 28-5-90
10-5-91	1-3-91 to 8-3-91 11-3-91 to 19-4-91 22-4-91 to date not legible 5.91
23-8-91	13-5-91 to 21-6-91 24-6-91 to 2-8-91 5-8-91 to 23-8-91

Opposite party has filed engagement card Ext. M-1 which bears the photo of the worker. This shows following engagement.

1-6-87 to 8-7-87	
11-7-87 to 19-8-87	97 days
22-8-87 to 9-9-87	
11-3-89 to 19-4-89	
22-4-89 to 31-5-89	99 days
3-6-89 to 21-6-89	

According of Joint Inspection report the worker has worked as follows :

1989—46 days

1990—80 days

1991—141 days

1992—13 days

Last worked on 21-2-92

ID No. 77/2000 Mahender Pal S/o Sh. Nand Ram

Worker claims to have been regularly engaged w.e.f. 18-2-93 to 17-2-95, as daily wage basis continuously, but on 17-2-95 he was not allowed to function without any reason, notice, notice pay or compensation. He has filed following certificates showing his engagement:

Certificate dated	Duration
22-5-93	18-2-93 to 29-3-93 1-4-93 to 10-5-93 11-5-93 to 22-5-93
25-11-93	22-8-93 to 30-9-93 3-10-93 to 11-11-93 14-11-93 to 22-11-93

Opposite party has filed engagement card of the worker. The worker has admitted his photo and signature on the said card i.e. Ext. M-1. The said card reveals following engagement :

1.	18-2-93 to 28-2-93	11 days
2.	1-3-93 to 31-3-93	28 days
3.	1-4-93 to 30-4-93	30 days
4.	1-5-93 to 20-5-93	19 days
5.	22-8-93 to 31-8-93	10 days
6.	1-9-93 to 30-9-93	29 days
7.	1-10-93 to 31-10-93	29 days
8.	1-11-93 to 22-11-93	20 days
9.	13-2-94 to 28-2-94	16 days
10.	1-3-94 to 30-4-94	30 days
11.	1-5-94 to 13-5-94	11 days

Joint inspection report of muster roll reveals following engagements:

1993—40 days

1994—49 days

1995 up to 16-2-95—40 days

ID No. 82/2000 Sewa Ram S/o Belaram

Workman was duly appointed and engaged as regular labour w.e.f. 13-11-92 on daily wage basis and continuously worked as such till 17-2-95, the date on which he was not allowed to function. It is note worthy that no appointment letter was issued. Right from the initial appointment, management made artificial breaks. The workman has alleged that he was not given any reason, notice for disengagement nor given any notice pay in lieu of notice and notice pay.

Workman has filed the affidavit and certificates of engagement as casual labour in support of his case the details of his working days are as under :

Certificate dated	Duration	
2-2-93	13-11-92 to date not legible 12.92, 25-12-92 to 2-2-93	79 days
22-5-93	21-3-93 to 29-4-93 2-5-93 to 21-5-93	59 days
21-6-93	22-5-93 to 20-6-93	30 days

Opposite party has filed engagement card Ext. M-1 which bears the photo of the worker. This shows following engagement :

13-11-92 to 22-11-92	8 days
25-12-92 to 2-2-93	
21-3-93 to 31-3-93	11 days
1-4-93 to 30-4-93	28 days
1-5-93 to 21-5-93	20 days
22-5-93 to 31-5-93	10 days
1-6-93 to 20-6-93	20 days
13-2-94 to 28-2-94	16 days
1-3-94 to 31-3-94	29 days
1-4-94 to 30-4-94	29 days
1-5-94 to 11-5-94	9 days

Joint Inspection report of muster roll reveals following engagements :

1993 50 days

1994 28 days

Last worked on 31-5-94.

ID No. 162/2000 Tota Ram S/o Sh. Balram

Workman was duly appointed and engaged as regular labour w.e.f. 25-6-1990 on daily wage basis and continuously worked as such till 2-11-94, the date on which he was not allowed to function. It is note worthy that no

appointment letter was issued. Right from the initial appointment, management made artificial breaks. The workman has alleged that he was not given any reason, notice for disengagement nor given any notice pay in lieu of notice and notice pay.

Workman has filed the affidavit and certificates of engagement as casual labour in support of his case the details of his working days are as under :

Certificate date	Duration	No. of days worked
5-10-90	25-6-90 to 3-8-90 6-8-90 to 14-9-90 17-9-90 to 5-10-90	99 days
25-5-91	12-2-91 to 23-3-91 26-3-91 to 4-5-91 7-5-91 to 25-5-91	99 days
5-12-91	24-8-91 to 2-10-91 5-10-91 to 13-11-91 16-11-91 to 4-12-91	99 days
16-11-92	17-8-92 to 15-10-92 except 26 & 27 Sep	No. of days not mentioned.
22-7-92	16-4-92 to 13-7-92	No. of days not mentioned.

Opposite party has filed engagement card Ext. M-1 which bears the photo of the worker. This shows following engagement :

25-6-90 to 3-8-90	99 days
6-8-90 to 14-9-90	
17-9-90 to 5-10-90	
12-2-91 to 23-3-91	99 days
26-3-91 to 4-5-91	
7-5-91 to 25-5-91	
24-8-91 to 2-10-91	99 days
5-10-91 to 13-11-91	
16-11-91 to 4-12-91	
16-4-92 to 30-4-92	15 days
1-5-92 to 31-5-92	31 days
1-6-92 to 30-6-92	30 days
1-7-92 to 13-7-92	13 days

Joint inspection report of muster roll reveals following engagements :

1990 5 days

1991 168 days

1992 63 days

1994 21 days

Last worked on 31-5-94.

ID No. 163/2000 Ram Pal S/o Roshanlal

Worker was appointed as a regular workman on daily wage basis without providing him any appointment letter

on 12-11-84 and worked till 30-6-90 and on 1-7-90 he was not allowed to function.

Worker has filed following certificates :

A 1	16-8-84 to 12-11-84	Working days, actually worked not mentioned
A 2	9-3-85 to 4-7-85	Working days, actually worked not mentioned
A 3	16-12-86 to 24-1-87 31-1-87 to 1-3-87 10-3-87 to 28-3-87	Working days, actually worked not mentioned
A 4	22-12-87 to 30-1-88 2-2-88 to 12-3-88 15-3-88 to 2-4-88	Working days, actually worked not mentioned
A 5	15-7-88 to 23-8-88 26-month not legible-88 to date not legible 10.88 7-10-88 to 25-10-88	Working days, actually worked not mentioned
A 6	6-9-89 to 30-9-89 3-10-89 to 11-11-89 14-11-89 to 17-12-89	Working days, actually worked not mentioned
A 7	1-4-90 to 10-5-90 Not legible to 21-6-90 24-6-90 to 30 months and year not legible	Working days, actually worked not mentioned

Opposite party has filed engagement card Ext. M-1 which bears the photo of the worker. This shows following engagement :

3-11-86 to 11-11-86	
14-11-86 to 23-12-86	99 days
26-12-86 to 13-1-87	

According to Joint Inspection, worker is shown to have been engaged as follows :

1984	28
1985	80
1986	52
1987	109
1988	204
1989	180
1990	73
1991	127

Worker last worked on 17-9-91.

ID No. 164/2000 Harprasad S/o Sh. Teluram

Worker's allegation is that he was duly selected as regular employee on daily wage basis. Wages were initially Rs. 10.50 per day, which was enhanced to Rs. 12.50 per day. Management made artificial interruptions right from initial appointment since 1-3-87. Suddenly the workman was not allowed to function since 26-5-89 without any rhyme or reason, notice, notice pay or compensation in

violation of Section 25 F at the same time juniors were retained. Worker has filed the certificate in respect of the engagement showing following period.

Paper No. 4/3	1-3-87 to 1-4-87 6-4-87 to 13-5-87 16-5-87 to 4-6-87
Paper No. 4/4	16-9-87 to 26-9-87 29-9-87 to 7-11-87 10-11-87 to 28-11-87
Paper No. 4/5	15-7-88 to 23-8-88 26-8-88 to 4-10-88 7-10-88 to 25-10-88
Paper No. 4/6	12-2-89 to 24-3-89 26-3-89 to 4-5-89 7-5-89 to 25-5-89

Opposite Party has filed the engagement chart of the worker Ext. M1, showing following details :

1-3-87 to 1-4-87	32 days
4-4-87 to 13-5-87	40 days
16-5-87 to 4-6-87	19 days
16-9-87 to 26-9-87	80 days
29-9-87 to 7-11-87	
20-12-87 to 4-1-88	14 days
13-2-89 to 24-3-89	
27-3-89 to 5-5-89	99 days
8-5-89 to 26-5-99	

According to Joint Inspection report of muster rolls the days are as follows :

1987	83 days
1988	4 days
1989	66 days

Worker has stated in cross-examination that he has worked up to 89. Further has stated that he had worked after 89 also.

ID No. 187/2000 Sunil Kumar S/o Sh. Danial

Worker has alleged that he has served with the opposite party as daily wage casual labour w.e.f. 16-8-88 to 6-2-91 (roughly 2½ years). The employer engaged the worker for continuous work of 3 months, later on disengaged the services and engaged other casual labour and called the worker after 3 months. In support of his case he has filed following certificates:

Certificate dated	Duration	No. of working days
Annexure 6 25-3-91	10-8-90 to 14-6-90 17-9-90 to 27-10-90 30-10-90 to 27-10-90 22-11-90 to 31-12-90 3-1-91 to 11-2-91	No. of working days not mentioned.

	Certificate dated	Duration	No. of working days
Annexure 5	12-12-89	2-12-88 to 11-12-91	No. of working days not mentioned.
Annexure 4	5-2-90	6-2-89 to 13-3-89 20-3-89 to 8-4-89 11-4-89 to 9-5-89	No. of working days not mentioned.
Annexure 3	24-7-90	18-12-89 to 26-1-90	No. of working days not mentioned.
Annexure 2	16-1-90	27-11-89 to 16-12-89	No. of working days not mentioned.
Annexure 1	10-11-89	16-8-88 59 15-9-88	No. of working days not mentioned.

Worker has admitted Ext. M-1 filed by the opposite party regarding his engagement, but has stated that the same contains the entries up to 1990 whereas he has worked till 1991 and after 1991 also.

According Ext. M1, the worker has worked for 34 days in 1989 and 25 days in 1990.

The report of the muster roll reveals that the worker has worked 67 days in 1989 and 27 days in 1990.

I.D. No. 188/2000 Puttan Khan S/o Jamil Khan.

According to the statement of claim the worker worked as a daily wager worker/casual labour in the Indian Veterinary Research Institute w.e.f. 11-7-78 to 30-11-84.

	Certificate dated	Duration	No. of working days
A1	28-2-78	2-11-77 to 28 month & year not legible	No. of working days not mentioned
A2	6-11-78	11-7-78 to 6-11-78	No. of working days not mentioned
A3	16-5-90	28 month not legible. 80 to 18-5-99	No. of working days not mentioned
A4	15-12-81	2-9-81 to 29-11-81	No. of working days not mentioned
A5	20-10-84	23-7-84 to 19-10-84	No. of working days not mentioned
A6	30-11-84	22-10-84 to 30-11-84	No. of working days not mentioned
A7	24-6-81	1-3-81 to 29-5-81	No. of working days not mentioned
A8	30-7-83	5-6-83 to 12-8-83 (Did not worked w.e.f. 12-8-83)	No. of working days not mentioned

The opposite party always terminated the service illegally despite having work. The photo copies of the certificates are attached with the statement of the claim i.e. A1 to A 6.

The opposite party engaged the worker for the continuous work for 3 months and later on disengaged and engaged another causal labour and called the present workers for the work for 3 months. Reason for such act of opposite party was to make him disentitled for regular appointment.

It is alleged that the institute is not a purely research institute, but is a big educational commercial place, where large quantity of medicines are sold by the opposite party and in addition milk agricultural equipments, animal flesh, eggs are sold.

After the termination of services of the workman, the opposite party is getting work done through contractor. Hence the workman is entitled to get protection of Industrial Disputes Act, 1947 as he has completed more than 240 days in a calendar year.

The workers has filed Photostat copies of following documents:

1. Engagement certificates 28-2-78, 6-11-78, 19-5-80, 15-12-81, 20-10-84, 30-11-84, 4-6-81, 30-9-83.
2. Employment exchange registration card dtd. 20-4-92.
3. Attendance roll.
4. IVRI circular dated 27-8-94, 7-2-95, 2-2-1997.
5. News paper advertisement IVRI dtd. 22-8-99, Amar Ujala.
6. Extracts of Ministry of Home Affairs OM
7. Government of India No. 49014/7/83-Estt (C) 13-10-83.
8. Government of India No. 49014/86/Estt.(C) 7-6-88.
9. ICAR circular dated 16-9-88 and other circular etc.
10. Government of India, Ministry of Personnel order No. 51016/2/90-Estt. C. dated 10-9-93
11. Extracts of publication of advertisement of various news papers.
12. IVRI office order.
13. So called agreement dated 12-2-92.
14. Representations of persons.
15. IVRI circular dated 30-8-94.
16. Office order dated 29-4-88 regarding pay.
17. Office order of IVRI about grant of temporary status to the causal worker dated 17-8-98.
18. Failure report about conciliation by ALC (C) to the Government.

The worker has filed his affidavit and he was cross-examined by the representative of the opposite party.

The opposite party has submitted that the opposite party i.e. IVRI is purely a research institute under the management and control of Indian Council of Agricultural Research (ICAR) which functions under the Department of Agriculture, Research Education (DARE). The said ICAR is an autonomous body registered under the Societies Registration Act, 1860. The IVRI is not working with the aim of profit as its activities are connected with research in veterinary science. It therefore cannot be said to be an undertaking analogous to business trade. It is not an industry and the worker cannot claim benefit under the Industrial Disputes Act, 1947.

In the large farms and dairy maintained by various departments of the IVRI the causal/seasonal work is done in order to meet temporary needs the causal/daily rated employees are engaged from time to time. Causal engagements are also made when projects are sanctioned by sponsors. Whenever a project is sanctioned no permanent post is sanctioned with it. The project is carried on with the help of causal engagement and these casual workers are paid from the funds sanctioned for the project. It is further submitted that there is no interse seniority amongst them and they are purely engaged at the availability of work and their presence at required place. It is also pertinent to mention that the casual mazdoors are engaged for 40 days at a time, 100 days in six months and 200 days in a year.

The worker was engaged as a daily wager causal labour for seasonal/intermittent nature work in the IVRI. He has worked for specific period. Workman has never worked for 240 days in any calendar year or proceeding 12 months in the institution. Worker has worked in different spells as and when he has worked/engaged in IVRI. Engagement was sanctioned for the fixed period and thereafter the work under the engagement came to an end. Thus the worker is fully covered under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947.

It is submitted that the present claim filed by the worker is highly belated and over stable. The management has not contravened any provisions of the Industrial Disputes Act, 1947.

The present worker and others had filed their regularization case before the Central Administrative Tribunal, Allahabad and by the common judgment dated 15-12-94 and 16-12-94, pronounced in the case of Munna Lal and others and Suresh Kumar & others, their cases were dismissed by the Central Administrative Tribunal, Allahabad and against the judgments some of the applicants had also moved SLP before the Hon'ble Supreme Court of India and had also been dismissed by the Hon'ble Supreme Court of India by order dated 7-8-95. It is further submitted that in the instructions of the Government of

India, ICAR, the engagement of causal labours have been totally discontinuous since 1994. However, essential cleaning work is being entrusted to the contractors on contract basis as the same cannot be allowed to be left in public interest.

The opposite party has filed following documents:

1. Photocopies of circulars regarding guidelines of engagement of causal labours.

(a) ICAR No. F-11-2/83-Esst. III dated 29-3-1964

(b) ICAR No. F-42-10/77-EEV 25-6-86

(c) ICAR No. F-21(8)/88-cdn. 22-1-1987

(d) ICAR No. F-24-6/88-cdn. 16-9-88

(e) ICAR No. F-24-6/88-cdn. 16-12-88

(f) ICAR No. F-24-6/88-cdn. 16-10-1989

(g) Govt. of India, Ministry of Personnel No. F. 49014/2/86 ED-(C) 7-6-88

(h) ICAR No. F-24(6)/88 cdn. dated 19-9-1989

(i) ICAR No. F-160/90-I.A.I. dated 8-10-1990

(j) ICAR No. F-9-172/90-Esst. IV dated 8-11-90

(k) ICAR No. F-1-1/94-Legal Cell dated 18-3-1994

(l) Govt. of India, Ministry of Personnel 51016/2/90-Esst-C dated 10-9-93

(m) ICAR No. F-24(15)/93-cdn. dated 23-11-94

(n) ICAR No. F-24/10/03-cdn. dated 23-9-94

Photo copy of judgment of CAT, Allahabad OA 384/1994, 388/94, 697/94, 506/94, 528/94, 536/94, 577/94, 382/94, 882/94, 880/94, 881/94, 829/94, 495/94, 1612/94, 1584/94, 883/94, 728/94, 725/94, 885/94, 717/94, 890/94, 467/94, 908/94, 595/94, 92/94, 379/94, 545/94, 119/94, 64/94, 1810/92, 1812/92, 927/94.

2. Photostat copy of judgment passed in SLP 16182/94, 1665/95, 14593/95 dated 31-7-95

3. Photostat copy of order passed in SLP dated 8-5-95.

The opposite party has filed the affidavit of Shri Sunil Kumar Gupta, Asstt. Administration Officer of IVRI, who has been cross-examined by the authorized representative of the opposite party and the details of muster roll, which show 29 days' engagement w.e.f. 1-1-91 to 31-1-91

I.D. No. 189/2000 Deendayal S/o Shri Ganga Ram.

The worker has alleged that he was daily wager casual labour in IVRI w.e.f. 1-6-89 to 6-2-93 and the opposite party always terminated the services illegally. The worker has attached certificate A1 to A6 along with the statement of claim. Which shows that the worker was engaged as per details given below:

Date of certificate	Duration	No. of days	
A1 14-8-89	1-6-89 to 15-6-89	No. of working days not mentioned	4. 2-11-86 to 11-12-86 Working days not disclosed. 5. 14-12-86 to 21-12-86 Working days not disclosed.
A2 5-10-92	16-4-90 to 13-7-92	89 days	6. 15-7-88 to 23-3-88 Working days not disclosed. 7. 2-6-88 to 4-10-88 Working days not disclosed.
A3 19-2-92	22-1-92 to 9-2-92	29 days	8. 7-10-88 to 25-10-88 Working days not disclosed. 9. 22-12-87 to 30-1-88 Working days not disclosed.
A4 6-2-93	19-11-92 to 26-12-92	74 days	10. 2-2-88 to 12-3-88 Working days not disclosed.
A4 6-2-93	29-12-92 to 6-2-93	80 days	11. 15-3-88 to 2-4-88 Working days not disclosed. 12. 6-9-89 to 30-9-89 Working days not disclosed.
A5 18-12-91	1-8-91 to 31-10-91	No. of working days not mentioned	13. 3-10-89 to 11-11-89 Working days not disclosed. 14. 14-11-89 to 17-12-89 Working days not disclosed.
A6	Is the mark sheet		15. 12-2-89 to 23-3-89 Working days not disclosed. 16. 26-3-89 to 4-5-89 Working days not disclosed. 17. 7-5-89 to 25-5-89 Working days not disclosed. 18. 1-4-90 to 10-5-90 Working days not disclosed. 19. 13-5-90 to 21-6-90 Working days not disclosed. 20. 24-6-90 to 30-6-90 Working days not disclosed. 21. 6-10-90 to 14-11-90 Working days not disclosed. 22. 17-10-90 to 26-12-90 Working days not disclosed. 23. 29-12-90 to 16-1-91 Working days not disclosed. 24. 5-10-91 to 13-11-91 Working days not disclosed. 25. 6-11-91 to 25-12-91 Working days not disclosed. 26. 28-12-91 to 6-1-92 Working days not disclosed.

The workman has alleged that the employer engaged the worker for continuous work for the three months and later on disengaged. The employer thereafter engaged other workers on daily wage.

However, the management has deputed the claim and submitted the Photostat copy of casual labour card of Deen Dayal which shows the following work details has worked as follows:

- 1. 1-6-89 to 15-6-89 15 days
- 2. 29-3-91 to 31-10-91 140 days
- 3. 22-1-92 to 31-1-93 109 days
- 4. 1-11-93 to 30-12-93 30 days
- 5. 1-12-93 to 31-12-93 27 days
- 6. 16-5-92 to 31-5-92 46 days. Admittedly wrong.
- 7. 1-6-92 to 30-6-92 30 days
- 8. 1-1-92 to 13-7-92 13 days

This card is admitted to the workman.

Muster roll details filed by the management shows following details:

1991	20 days
1992	91 days
1994	54 days
1995	63 days

The worker has stated that he also worked from 20-1-94 to 15-5-95 under the order of the Court and prior to it he worked till 6-2-93.

I. D. No. 192/2000 S/o Ram S/o Shri Buddh Sen.

The worker's case is that he was appointed on 16-8-84 and worked on daily wage basis. Management on 7-1-92 did not allow the worker to work on 7-1-92. Management made artificial interruptions. The worker has filed certificates showing following details of work.

- 1. 16-8-84 to 12-11-84 Working days not disclosed.
- 2. 12-2-85 to 10-6-85 Working days not disclosed.
- 3. 21-9-86 to 30-11-86 Working days not disclosed.

The opposite party has disputed the claim and has alleged that the worker has not worked for 240 days in any calendar year.

According to documentary evidence Ex M1 the worker has admitted that he was engaged for 119 days in 1985, 98 days in 1986, 99 days in 1987 and so on. The details show that in none of the calendar year he was engaged for 240 days.

Muster roll details filed by the management shows that the worker worked for 27 days in 1984, 37 days in 1985, 21 days in 1986, 98 days in 1987, 177 days in 88, 192 days in 1989, 150 days in 1990, 104 days in 1991.

193/2000 Balak Ram S/o Shri Bulaki Ram.

Worker has alleged that he worked as daily wager casual worker in IVRI w.e.f. 19-8-75 to 8-7-85 as per the certificates A 1 to A 7 attached with the statement of claim. The details of work is shown as follows:

- 1. 22-7-73 to 21-10-73
- 2. 19-8-75 to 12-10-75 & 25-11-75 to the date not legible (certificate dtd. 18-12-75)
- 3. 7-4-76 to 6-7-76
- 4. 19-8-75 to 17-10-75
- 5. 18-10-75 to 24-11-75
- 6. 25-11-75 to 18-12-75

7. 16-11-76 to 14-3-77
8. 11-7-78 to 6-11-78
9. 13-4-79 to 12-6-79
10. 12-12-79 to 9-4-80
11. 4-9-80 to 2-11-80
12. 7-8-81 to 17-11-81
13. 2-1-85 to 31-3-85
14. 13-4-85 to 8-7-85

Number of working days not disclosed in any certificate.

But according to the management the worker has worked only for 89 days from 2-1-85 to 31-3-85 and 89 days from 13-4-85 to 10-7-85 as shown with engagement particulars which certifies the photo of the worker i.e. Ext. M1. Worker has admitted his photo and signature on the said document and has stated that he did not work after 8-7-85.

I. D. No. 195/2000 Babu Ram S/o Shri Ganga Ram.

Worker's allegation in brief is that he worked as daily wager casual labour in IVRI w.e.f. 16-8-93 to May, 94. The photocopy of certificates have been enclosed as annexure A1 to A6.

1. A1 16-8-93 to 24-9-93 - 72 days
27-9-93 to 31-10-93 - 72 days
2. A2 is the certificate dated 4-5-94 without mentioning the period.
3. A3 is the letter stating that during the May, 94 the worker was working as casual mazdoor and payment was requested to be made to him at the rate of Rs. 67. Letter is dated 27-6-94.
4. A4 is probably the prescription dated 5-5-94.
5. A7 is the letter that the worker has worked in the March, 94 as casual mazdoor.
6. A8 is the letter dated 12-5-94 for payment of wages for work in the month of April, 94 to the tune of Rs. 606.

The opposite party has filed the engagement details Ex. M1, contains the details of engagement of the worker which is as follows:

1. 16-8-93 to 31-8-93=15 days.
2. 1-9-93 to 30-9-93= 26 days.
3. 1-10-93 to 31-10-93 = 31 days
4. 18-3-94 to 31-3-94 = 16 days
5. 1-4-94 to 30-4-94 = 28 days
6. 1-5-94 to 31-5-94 = 31 days.

The said document is admitted to the worker in his cross-examination. Thus it is clear that in total 5 months he worked only in 147 days. He has not worked continuously for 12 calendar months preceding date of his termination.

I. D. No. 199/2000 Sanjay Tiwari S/o Shri R. K. Tiwari.

Worker's allegation is that he has worked as daily wages casual labour w.e.f. 15-11-88 to 10-4-95. Opposite party always terminated the service of the worker illegally. He has filed certificate of engagement with the statement of claim i.e. A1 to A6. The details shown as follows :

- | | |
|----|--|
| A1 | 15-11-88 to 31-5-89 except 19-3-89, 20-3-89,
30-4-89, 1-5-89= 199 days. |
| A2 | 17-9-91 to 26-10-91 working days not mentioned. |
| A3 | 29-10-91 to 15-11-91 working days not mentioned. |
| A4 | 26-1-90 to 6-3-90, 16-4-90 to 25-5-90, 80 days |
| A5 | to A6 not filed. |

It is admitted to the worker in cross-examination that he has not worked after 15-11-91.

According to the Joint Inspection report the worker has worked as per details below :

15-11-88 to 30-11-88	= 16
1-12-88 to 24-12-88	= 24
28-12-88 to 31-12-88	= <u>04</u>
	44
1-1-89 to 31-1-89	= <u>31</u>
1-2-89 to 28-2-89	= 24
1-4-89 to 27-4-89	= 24
7-5-89 to 31-5-89	= <u>22</u>
	101
26-1-90 to 31-1-90	= 06
1-2-90 to 28-2-90	= 28
16-4-90 to 30-4-90	= 15
1-5-90 to 25-5-90	= 25
	74

ID No. 200/2000 Ramesh Chand S/o Shyam Lal.

Workman was appointed and engaged as regular labour on 21-9-86 and he worked continuously as such till 5-9-89 and suddenly the workman was not allowed to function on 5-9-89 without any rhyme or reason, notice, notice pay and compensation. Worker has filed certificates A1 to A6, which indicates that following days of work:

- | | | |
|----|----------------------|---------------------------------------|
| A1 | 21-9-86 to 30-11-86 | No. of working days
not mentioned. |
| | 2-11-86 to 11-12-86 | |
| | 14-12-86 to 31-12-86 | |
| A2 | 16-9-87 to 25-10-87 | No. of working days
not mentioned. |
| | 29-10-87 to 6-12-87 | |
| | 9-12-87 to 27-12-87 | |

A3	1-4-88 to 10-5-88 13-5-88 to 21-6-88 24-6-88 to not legible date & month.	No. of working days not mentioned.	Annexure 2	28-9-84 to 7-10-84 Certificate issued on 7-10-85	No. of working days not mentioned.
A4	26-5-89 to 4-7-89 7-7-89 to 15-8-89 18-8-89 to 5-9-89	No. of working days not mentioned.	Annexure 3	9-3-85 to 4-7-85 Certificate issued on 4-7-85	No. of working days not mentioned.
A5	not filed		Annexure 4	1-1-86 to 30-3-86 Certificate issued on 2-4-86	No. of working days not mentioned.
A6	16-10-86 to not legible 7-7-86 to 6-3-86	No. of working days not mentioned.	Annexure 5	1-1-87 to 9-2-87 12-2-87 to 23-3-87 26-3-88 to 13-4-87 Certificate issued on 16-4-87	No. of working days not mentioned.
According to engagement card of labour, the signatures and photo of which is admitted to the worker.			Annexure 6	22-12-87 to 30-1-88 2-2-88 to 12-3-88 15-3-88 to 2-4-88 Certificate issued on 2-4-88	No. of working days not mentioned.
	15-10-85 to 4-1-86 7-1-86 to 6-3-86 21-9-86 to 30-10-86 2-11-86 to 11-12-86 14-12-86 to 31-12-86	82 days 59 days 98 days	Annexure 7	12-2-89 to 23-3-89 26-3-89 to 4-5-89 7-5-89 to 25-5-89 Certificate issued on 23-12-89	No. of working days not mentioned.
	16-9-87 to 25-10-87 28-10-87 to 6-12-87 9-10-87 to 27-12-87	99 days	Annexure 8	6-9-89 to 30-9-89 3-10-89 to 11-11-89 14-11-89 to 17-12-89	No. of working days not mentioned.
	1-4-88 to 10-5-88 13-5-88 to 21-6-88 24-6-88 to 12-7-88 1-11-88 to 10-12-88 13-12-88 to 21-1-89	99 days 99 days	Annexure 9	14-90 to 10-5-90 13-5-90 to 21-6-90 24-6-90 to 30-6-90 Certificate issued on 30-6-90	No. of working days not mentioned.
	24-1-89 to 11-2-89 26-5-89 to 4-7-89 7-7-89 to 15-8-89 18-8-89 to 15-9-89	99 days			

Joint Inspection of muster roll reveals following description regarding working days in respect of the worker:

1985 51 days
1986 56 days
1987 93 days
1988 145 days
1989 132 days

ID No. 204/2000 Ramswaroop S/o Sh. Sunderlal

It is alleged that the worker was appointed on regular basis w.e.f. 7-10-84 on daily wage basis, without any appointment letter and was given artificial break and worked till 30-6-90 and on 1-7-90 he was not allowed to function.

Certificates filed in support of the case showing engagements as follows:

Annexure 1	15-7-88 to 23-8-88 26-8-88 to 4-10-88 7-10-88 to 25-10-88 Certificate issued on 4-1-89	No. of working days not mentioned.
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Engagement card of opposite party Ext. M-1 indicates the working days as follows.—

The photo and the signature is admitted to the worker.

9-3-85 to 4-7-85 1-1-86 to 30-3-86 1-1-87 to 9-2-87 12-2-87 to 23-3-87 26-3-87 to 13-4-87 22-12-87 to 30-1-88 2-2-88 to 12-3-88 15-3-88 to 2-4-88 15-7-88 to 23-8-88 26-8-88 to 4-10-88 7-10-88 to 25-10-88 13-2-89 to 24-3-89 27-3-89 to 5-5-89 8-5-89 to 26-5-89 6-9-89 to 30-9-89	48 days 89 days 99 days 99 days 99 days 99 days 25 days
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3-10-89 to 11-11-89	74 days
14-11-89 to 17-12-89	
1-4-90 to 10-5-90	87 days
13-5-90 to 21-6-90	
24-6-90 to 30-6-90	

Joint Inspection of muster roll reflect following working days :

1985	61 days
1986	82 days
1987	86 + 9 = 95 days
1988	166 days
1989	187 days
1990	80 days

ID No. 66/2000 Mohar Singh S/o Sh. Behari Lal

Workman was appointed and engaged as regular labour on 11-8-1987 and he worked continuously as such till 1-1-91 and suddenly the workman was not allowed to function on 1-1-91 without any rhyme or reason, notice, notice pay and compensation. Worker has filed certificate which indicates the following days of work :

Certificate dated	Duration	No. of working days
1. 25-3-88	11-8-87 to 11-11-87	No. of working days not mentioned.
2. 12-7-88	1-4-88 to 10-5-88 13-5-88 to 21-6-88 24-6-88 to 12-7-88	No. of working days not mentioned.
3. 27-11-89	17-8-88 to 25-9-89 28-9-89 to 6-11-89 6-11-89 to 27-11-89	No. of working days not mentioned.
4. 16-1-91	6-10-90 to 14-11-90 17-11-90 to 26-12-90 29-12-90 to 16-1-91	No. of working days not mentioned.
5. 21-5-91	21-3-91 to 29-4-91 2-5-91 to 21-5-91	No. of working days not mentioned.
6. 30-9-91	3-9-91 to 30-9-91	No. of working days not mentioned.
7. 6-1-92	5-10-91 to 13-11-91 16-11-91 to 25-12-91 28-12-91 to 6-1-92	No. of working days not mentioned.

Certificate show that he was casual labour on daily wage.

Casual labour engagement card Ext. M-1 shows following period. The photo and signature on which is admitted to the worker.

11-8-87 to	60 days
1-4-88 to 10-5-88	
13-5-88 to 21-6-88	99 days
24-6-88 to 12-7-88	
1-11-88 to 10-12-88	
13-12-88 to 21-1-89	99 days
24-1-89 to 11-2-89	
17-8-89 to 25-9-89	
28-9-89 to 6-11-89	99 days
9-11-89 to 27-11-89	
25-2-90 to 5-4-90	
8-4-90 to 17-4-90	89 days
20-5-90 to 28-5-90	
6-10-90 to 14-11-90	
17-11-90 to 26-12-90	99 days
29-12-90 to 16-1-91	
21-3-91 to 29-4-91	60 days
2-5-91 to 21-5-91	
3-9-91 to 30-9-91	28 days
10-5-92 to 18-6-92	89 days
21-6-92 to 30-7-92	
2-8-92 to 10-10-92	

Joint Inspection report of muster rolls :

1987	65 days
1988	152 days
1989	124 days
1990	162 days
1991	163 days
1992	55 days
Last working day 30-6-92.	

The worker though alleges that he was terminated on 1-1-91 but in the cross states that he did not work after 6-1-92.

ID No. 72/2000 Krishan Kumar S/o Sh. Kundan Lal

Allegations of the worker is that he was appointed on regular basis, yet the written appointment order was not supplied. Appointment was on daily wage basis. He worked w.e.f. 1-11-90 till private 17-2-95 continuously, but he was not allowed to work on 17-2-95. Worker has filed the certificate showing the details of work as casual worker.

Certificate dated	Duration	No. of working days
1. 7-12-90	1-11-90 to 10-12-90 13-12-90 to 26-12-90	No. of working days not mentioned.

Certificate dated	Duration	No. of working days	1990	142 days
2. 21-5-91	21-3-91 to 29-4-91	No. of working days not mentioned.	1991	100 days
	2-5-91 to 21-5-91		1992	97 days
			1993	79 days
			1994	58 days
			1995	41 days
			Last worked on 16-2-95.	
3. 30-9-91	3-9-91 to 30-9-91	No. of working days not mentioned.		ID No. 80/2000 Chetram S/o Khvaliram.
4. 7-2-92	23-11-91 to 1-1-92 4-1-92 to 7-2-92	No. of working days not mentioned.		Worker's case is that he was appointed as a regular labour on daily wage basis, although no appointment letter was issued. It is alleged that he was appointed on 12-8-93 and worked continuously till 16-2-95, but all of a sudden he was not allowed to function since 17-2-95 without assigning any reason, notice, notice pay or compensation worker has filed two certificate showing details of work which is under :
5. 30-4-92	13-4-92 to 30-4-92	18 days		
6. 31-5-92	3-5-92 to 31-5-92	29 days		
7. 2-2-93	13-11-92 to 22-12-92 25-12-92 to 2-2-93	78 days		
8. 29-7-93	9-5-93 to 17-6-93 20-6-93 to 29-7-93	75 days		
9. 31-10-93	6-10-93 to 31-10-93	26 days		

The opposite party has filed Ext. M-1 engagement card showing following details :

1. 14-3-90 to 22-4-90 25-4-90 to 3-6-90 6-6-90 to 24-6-90	99 days
2. 13-9-90 to 7-10-90 8-10-90 to 27-10-90	25 days
3. 1-11-90 to 10-12-90 13-12-90 to 26-12-90	54 days
4. 21-3-91 to 29-4-91 2-5-91 to 21-5-91	60 days
5. 14-8-91 to 24-8-91 3-9-91 to 30-9-91	11 days
6. 23-11-91 to 1-1-92 4-1-92 to 7-2-92	75 days
7. 13-4-92 to 30-4-92	18 days
8. 3-5-92 to 31-5-92 13-11-92 to 22-12-92	29 days
9. 25-12-92 to 2-2-93	80 days
10. 9-5-93 to 31-5-93 1-6-93 to 30-6-93	22 days
11. 1-7-93 to 31-7-93	25 days
12. 6-10-93 to 31-10-93	26 days
13. 12-3-94 to 31-3-94	17 days
14. 1-4-94 to 30-4-94	27 days

Joint Inspection report of muster rolls indicates following figures, year wise :

Certificate & date	Nature of employment	Duration
12-11-93	Casual labour	12-8-93 to 20-9-93 23-11-93 to 1-11-93 4-11-93 to 12-11-93
20-5-93	Casual labour	18-2-93 to 29-3-93 1-4-93 to 10-5-93

Opposite party has denied the claim and has filed casual labour engagement card Ext. M-1 showing following details :

18-2-93 to 28-2-93	11 days
1-3-93 to 31-3-93	29 days
1-4-93 to 30-4-93	30 days
1-5-93 to 10-5-93	10 days
14-8-93 to 31-8-93	18 days
1-9-93 to 30-9-93	28 days
1-10-93 to 14-11-93	9 days
5-2-94 to 28-2-94	24 days
1-3-94 to 31-3-94	29 days
1-4-94 to 27-4-94	27 days

Joint Inspection report of the representatives of parties showing following details :

1993	58 days
1994	57 days
1995	40 days

Last working days 16-2-95.

ID No. 185/2000 Jawahar Lal S/o Sh. Ramcharan Lal

Worker has alleged that he was appointed as casual labour on daily wage basis and worked as such w.e.f. 1-11-88 to 18-10-94. In support of the case the worker has filed certificate of work. It is further alleged that the opposite party has terminated his service illegally.

Certificate date	Nature of work	Duration	Certificate date	Nature of Work	Period	No. of working days
12-7-90	Casual mazdoor with break after every 40 days	1-3-90 to 31-5-90	22-12-87	Casual mazdoor	10-4-87 to 19-10-87 22-10-87 to 30-11-87 3-12-87 to 21-12-87	No details of working days.
Not legible	Casual mazdoor with break after every 40 days	11-6-89 to 11-9-89				
3-2-89	Casual mazdoor with break after every 40 days	1-11-88 to 28-1-89				
Not legible	Casual mazdoor with break after every 40 days	20-10-90 to 20-1-91				
26-2-92	Casual mazdoor with break after every 40 days	19-10-91 to 19-1-92				
14-8-92	Casual mazdoor with break after every 40 days	16-4-92 to 13-7-92				

Joint Inspection report engagement details :

1998	59 days
1989	55 days
1990	71 days
1991	72 days
1992	81 days
1993	60 days
1994	26 days

ID No. 194/2000 Ompal S/o Sh. Mohanlal

Workman's case is that he was appointed/engaged as regular labour, yet without any appointment letter on 12-8-91 and he continued as such till all of sudden he was terminated illegally on 13-10-93. He has filed two certificates, the details of which are as under :

1. 12-8-91 to 20-9-91, 23-3-91 to 1-11-91, 4-11-91 to 22-11-91 as casual mazdoor, certificate is dated 22-11-91.
2. 16-8-93 to 24-9-93, 27-9-93 to 12-10-93 = 41 days.

Certificate dated 31-10-93.

Opposite party has filed casual labour engagement card showing following details:

Paper No. is Ext. M-1.

1. 12-8-91 to 20-9-91, 23-3-91 to 1-11-91, 9-11-91 to 22-11-91 = 91 days.

2. 16-8-93 to 31-8-93 = 13 days. 1-9-93 to 30-9-93 = 20 days. 1-10-93 to 31-10-93 = 8 days = 41 days.

Joint Inspection report of muster rolls depict following details as under :

1991 77 days

1993 13 days

Remark-no work in 1992

ID No. 196/2000 Ram Avtar S/o Sh. Deendayal

Workman was appointed and engaged as regular labour on 1-4-87 and he worked continuously as such till 21-12-87 and suddenly the workman was not allowed to function on 21-12-87 without any rhyme or reason, notice, pay and compensation. Worker has filed certificates which indicates the following days of work :

Casual labour engagement card Ext. M-1 shows following period. The photo and signature on which is admitted to the worker.

10-9-87 to 19-10-87
22-10-87 to 30-11-87 99 days
3-12-87 to 21-12-87

ID No. 206/2000 Harswaroop S/o Sh. Dhaniram

Workman was appointed and engaged as regular labour on 22-11-87 and he worked continuously as such till 7-1-92 and suddenly the workman was not allowed to function on 7-1-92 without any rhyme or reason, notice, pay and compensation. Worker has filed certificates which indicates the following days of work :

Certificate date	Nature of work	Duration	No. of working days
16-1-91	Casual Labour	6-10-90 to 14-11-90 17-11-90 to 26-12-90 29-12-90 to 16-1-91	Working days not disclosed.
30-6-90	Casual Labour	1-4-90 to month not legible, date not legible to 21-6-90 24-6-90 to 30-6-90	Working days not disclosed.
7-4-88	Casual Labour	23-12-87 (over writing) date not legible to 12-3-88	Working days not disclosed.
26-5-89	Casual Labour	12-7-89 to 23-8-89 26-3-89 to 4-5-89 7-5-89 to 15-5-89	Working days not disclosed.
17-12-89	Casual Labour	6-9-89 to 30-9-89 3-10-89 to 11-11-89 14-11-89 to 17-12-89	Working days not disclosed.

Casual labour engagement card Ext. M-1 shows following period. The photo and signature on which is admitted to the worker.	Certificate date	Nature of work	Duration	No. of working days
12-2-89 to 23-3-89	28-6-90 not disclosed.	Casual Labour	14-3-90 to Labour	Working days 20-4-90
26-3-89 to 4-5-89	99 days		25-4-90 to not legible	
7-5-89 to 25-5-89			date 0-6-90	
6-9-89 to 30-9-89	25 days		6-6-90 to	
3-10-89 to 11-11-89	74 days		24-6-90	
14-11-89 to 17-12-89				
1-4-90 to 10-5-90	27-10-90	Casual Labour	13-9-90 to 27-10-90	Working days not disclosed.
13-5-90 to 21-6-90	87 days		3-9-91 to 30-9-91	Working days not disclosed.
24-6-90 to 30-6-90				
6-10-90 to 14-11-90	99 days		8-2-93 to 19-3-93	77 days
17-11-90 to 26-12-90			2-3-93 to 30-4-93	
29-12-90 to 16-1-90			(not clear)	
5-10-91 to 13-11-91			2-3-94	
16-11-91 to 25-12-91	90 days		3-5-93 to 12-5-93	
28-12-91 to 6-1-92				
Joint Inspection report of muster rolls :				
1987 17 days	26-1-91	Casual Labour	11-1-90 to 10-12-90	Working days not disclosed.
1989 180 days			13-12-90 to 26-12-90	
1993 165 days				
1994 83 days				
1995 6 days				

ID No. 5/2001 Pyarelal S/o Sh. Munna Lal

Workman was appointed and engaged as regular labour on 13-9-90 and he worked continuously as such till 7-1-92 and suddenly the workman was not allowed to function on 7-1-92 without any rhyme or reason, notice, notice pay and compensation. Worker has filed certificates which indicates the following days of work :

Certificate date	Nature of work	Duration	No. of working days
21-5-91	Casual Labour	21-3-91 to 2-5-91 to 2-5-91 to 21-5-91	Working days not disclosed.
9-1-89	Casual Labour	12-9-87 to 20-9-87	9 days
6-1-92	Casual Labour	5-10-91 to 13-11-91 to 16-11-91 to 25-12-91 to 28-12-91 to 6-1-92	Working days not disclosed.

14-3-90 to 22-4-90	
25-4-90 to 3-6-90	99 days
6-6-90 to 24-6-90	
13-9-90 to 7-10-90	45 days
8-10-90 to 27-10-90	
1-11-90 to 10-12-90	54 days
13-12-90 to 26-12-90	
21-3-91 to 29-4-91	60 days
2-5-91 to 21-5-91	
10-5-92 to 18-6-92	
21-6-92 to 30-7-92	89 days
2-8-92 to 10-8-92	
8-2-93 to 28-2-93	18 days
1-3-93 to 31-3-93	28 days
1-4-93 to 30-4-93	21 days
3-5-93 to 12-5-93	10 days

Joint Inspection of muster rolls reveals following working days :

Joint Inspection report of muster rolls :

1990 165 days

		Year	Period of engagement	No. of days
1991	169 days	1985	1-9-85 to 30-9-85	29
1992	44 days		1-10-85 to 23-10-85	23
1993	32 days		25-10-85 to 31-10-85	07
1994	07 days			59

ID No. 184/2000 Sh. Rajesh Kumar S/o Sh. Shyam Lal

The workman has alleged to work as a daily wager worker/casual labour w.e.f. 7-11-84 to 22-12-91. He has filed certificates which indicates the following days of work :

S. No.	Certificate date	Duration	No. of working days
1.	25-4-85	7-11-81 to 3-2-85 6-2-85 to 8-3-85	Working days not disclosed.
2.	16-4-87	15-1-87 to 23-2-87 26-2-87 to 15-3-87	40 days 20 days
3.	3-2-92	9-11-91 to 22-12-96 except 19 & 20-12-96	44 days
4.	26-12-87	21-10-87 to 23-11-87	Working days not disclosed.
5.	5-10-89	11-11-88 to 28-5-89 except 21-12-88 to 22-12-88, 1 & 2-2-89, 15 & 16-3-89, 26 & 27-4-89	199 days
6.	18-12-86	30-7-85 to 24-11-85 except 24-10-85	116 days
7.	7-1-89	11-3-88 to 17-4-88	Working days not disclosed
8.	2-2-91	12-10-90 to 25-12-90 except 21-11-90 & 22-11-90	45 days

The certificates show that he was casual mazdoor on daily wage basis.

Detailed period of engagement in different years as per the muster rolls/wage bills, filed by the management :

Year	Period of engagement	No. of days
1987	2-1-87 to 13-1-87 21-10-87 to 31-10-87 1-11-87 to 24-11-87	12 10 22 44
1988	11-11-88 to 30-11-88 1-12-88 to 20-12-88 24-12-88 to 31-12-88	20 20 08 48
1989	1-1-89 to 31-1-89 4-2-89 to 28-2-89 1-3-89 to 31-3-89 1-4-89 to 29-4-89 1-5-89 to 28-5-89	31 24 29 27 24
1990	12-10-90 to 31-10-90 12-11-90 to 30-11-90 1-12-91 to 5-12-91	20 19 05 44
1991	8-10-91 to 30-10-91 1-12-91 to 22-12-91	22 19 41

ID No. 71/2000 Sh. Hem Raj S/o Sh. Bulakhi Ram.

The workman was duly selected and appointed/engaged as regular labour on 27-11-987 and suddenly he was not allowed to function on 25-5-93 without any rhyme or reason and without any notice or the salary in lieu thereof. The worker has filed certificates which discloses the following days of work :

Sl. No.	Certificate dated	Duration	Days
1.	24-5-93	4-4-93 to 29-4-93 2-5-93 to 21-5-93	40 days
2.	21-6-93	22-5-93 to 20-6-93	24 days
3.	3-10-93	24-8-93 to 24-9-93 27-9-93 to 31-10-93	58 days
4.	3-2-88	27-11-87 to 21-12-87	Working days not disclosed.
5.	21-5-91	21-3-91 to 29-4-91 2-5-91 to 21-5-91	Working days not disclosed.
6.	11-11-92	1-9-92 to 10-10-92 13-10-92 to 11-11-92	70 days

No certificate in respect of work in 88, 89, 90 and 1993.

The certificates show that the worker was casual labour on daily wage.

Casual labour engagement card Ext. M-1 shows following period :

27-11-87 to 21-12-97	25 days
24-3-89 to 2-5-89	
5-5-89 to 13-6-89	99 days
16-6-89 to 4-7-89	
5-3-91 to 24-3-91	20 days
27-3-91 to 29-9-91	54 days
2-5-91 to 21-5-91	
24-8-91 to 2-10-91	99 days
5-10-91 to 13-11-91	
16-11-91 to 4-12-91	
4-4-93 to 30-4-93	21 days
1-5-93 to 21-5-93	19 days
22-5-93 to 31-5-93	10 days
1-6-93 to 20-6-93	14 days
23-8-93 to 31-8-93	7 days
19-9-93 to 30-9-93	11 days
1 to 31st Oct	29 days

Report on the basis of muster roll shows following details of work year wise :

1989	62 days
1991	145 days
1992	68 days
1993	79 days
1994	33 days

Last worked on 31-10-94.

ID No. 70/2000 Bhawan Prakash S/o Sh. Sunder Lal.

The workman was duly selected and appointed/engaged as regular labour on 25-3-85 and suddenly he was no allowed to function on 17-2-95 without any rhyme or reason and without any notice or the salary in lieu thereof. The worker has filed certificates which discloses the following days of work :

Sl. No.	Certificate dated	Duration	No. of work- ing days
1.	30-10-85	25-3-85 to 21-6-85 24-6-85 to 23-2-85 28-9-85 to 22-12-85 25-9-85 to 21-10-85	89 days 30 days 59 days 30 days
			208 days

Sl. No.	Certificate dated	Duration	No. of work- ing days
2.	8-9-86	20-5-86 to 16-8-86	Working days not disclosed
3.	28-7-87	16-4-87 to 25-5-87 25-5-87 to not legible 9-9-87 to 22-7-87	Working days not disclosed
4.	21-4-88	21-2-88 to 31-3-88 2-4-88 to 21-4-88	Working days not disclosed
5.	31-10-88	16-8-88 to 9-9-88 12-9-88 to 21-10-88 24-10-88 to 31-10-88	Working days no disclosed
6.	26-5-89	12-2-89 to 23-3-89 26-3-89 to 4-5-89 7-5-89 to 25-5-89	Working days not disclosed
7.	17-12-89	5-8-89 to 14-10-89 17-10-89 to 25-11-89 28-11-89 to 16-12-89	Working days not disclosed
8.	16-1-91	6-10-90 to 14-11-90 17-11-90 to 26-12-90 29-12-90 to 16-1-91	Working days not disclosed
9.	30-4-92	22-3-92 to 30-4-92	Working days not disclosed

The certificates show that he was casual labour on daily wages.

The casual labour engagement card Ext. M-1 shows following period :

16-4-87 to 25-5-87	
28-5-87 to 6-7-87	99 days
9-7-87 to 27-7-87	
12-1-88 to 20-2-88	40 days
21-2-88 to 31-3-88	40 days
3-4-88 to 21-4-88	19 days
16-8-88 to 9-4-88	
12-9-88 to 21-10-88	72 days
24-10-88 to 11-11-88	
12-2-89 to 23-3-89	
26-3-89 to 4-5-89	99 days
7-5-89 to 25-5-89	
5-9-89 to 14-10-89	
17-10-89 to 25-11-89	99 days
28-11-89 to 16-12-89	
6-10-90 to 14-11-90	

17-1-86 to 26-12-90	99 days
29-12-90 to 16-1-91	
32-3-92 to 30-4-92	40 days
21-3-94 to 31-3-94	11 days
1-4-94 to 30-4-94	28 days

Statement of opposite party on the basis of muster roll shows following figures :

Year	Days
1985	75
1986	25
1987	73
1988	112
1989	92
1990	81
1992	16
1994	37
1995	40

Last worked on 16-2-95.

ID No. 75/2000 Sh. Daya Ram S/o Sh. Banshi Lal.

The workman has alleged that he was duly selected and pointed/engaged as regular labour on 1-1-86 and suddenly his services were terminated orally on 16-2-95 without any notice or the salary in lieu thereof, the worker has filed certificates which discloses the following days of work :

Sl. No.	Certificate dated	Duration	No. of work- ing days
1.	28-7-87	1-5-87 to 25-5-87 28-5-87 to 6-7-87 9-7-87 to 22-7-87	Working days not disclosed
2.	12-7-88	1-4-88 to 10-4-88 13-5-88 to 1-6-88 24-6-88 to 12-7-88	Working days not disclosed
3.	24-10-90	3-9-90 to 12-10-90 15-10-90 to 19-10-90	Working days not disclosed
4.	31-7-91	1-6-91 to 10-7-91 13-7-91 to 31-7-91 1-8-91 to 11-8-91	Working days not disclosed
5.	29-1-91	28-11-90 to 6-1-91 9-1-91 to 27-1-91	Working days not disclosed
6.	9-4-92	7-1-92 to 15-2-92 18-2-92 to 28-3-92 31-3-92 to 9-4-92	Working days not disclosed

The certificates show that he was casual mazdoor on daily wage basis.

The casual labour engagement card Ex. M-1 shows following period :

1-1-86 to 30-3-86	89 days
6-9-86 to 15-10-86	
18-10-86 to 26-11-86	
29-11-86 to 17-12-86	99 days
6-5-87 to 25-5-87	
28-5-87 to 6-7-87	
9-7-87 to 27-7-87	79 days
1-4-88 to 10-5-88	
13-5-88 to 21-6-88	
24-6-88 to 12-7-88	99 days
11-3-89 to 19-9-89	
22-4-89 to 31-5-89	
3-6-89 to 21-6-89	99 days
3-9-90 to 12-10-90	
15-10-90 to 19-10-90	45 days
20-10-90 to 25-11-90	
28-11-90 to 6-1-91	
9-1-91 to 27-1-91	96 days
1-6-91 to 10-7-91	
13-7-91 to 31-7-91	59 days
1-8-91 to 11-8-91	11 days
2-1-92 to 15-2-92	
18-2-92 to 28-3-92	
31-3-92 to 9-4-92	90 days
21-3-94 to 31-1-94	11 days
1-4-94 to 30-4-94	28 days

Muster roll details as submitted by the opposite party shows following details :

1.	1986	138 days
2.	1987	53 days
3.	1988	82 days
4.	1989	23 days
5.	1990	87 days
6.	1991	85 days
7.	1992	75 days
8.	1994	42 days
9.	1995	41 days

Last worked on 16-2-95.

ID No. 69/2000 Sh. Bhim Sen S/o Sh. Banshi Lal

Worker's allegation is that he was engaged as regular labour on 12-1-88 by the opposite party. Initially he was paid at the rate of Rs. 12.50 per day and subsequently raised to Rs. 17.35 per day. He was not given any appointment order. The management made artificial interruption without any intimation. Suddenly he was not

allowed to function on 17-2-95 without any notice, compensation etc. The worker has filed certificates in support of his claim. According to Photostat copies of certificate filed by the workman details are as under :

Sl. No.	Certificate dated	Duration	No. of working days
1.	13-3-89	1-12-88 to 9-1-89 12-1-89 to 20-12-89 23-2-89 to 12-3-89	No. of Working days not men- tioned.
2.	9-10-89	4-7-89 to 12-8-89 15-8-89 to 23-9-89 26-9-89 to 9-10-89	No. of working days not men- tioned.
3.	15-5-90	2-2-90 to 13-3-90 16-3-90 to 4-4-90 27-4-90 to 15-5-90	No. of working days not men- tioned.
4.	10-5-91	1-2-91 to 8-3-91 11-3-91 to 19-4-91 22-4-91 to 10-5-91	No. of working days not men- tioned.
5.	23-8-91	13-5-91 to 21-6-91 24-6-91 to 2-8-91 5-8-91 to 23-8-91	No. of working days not men- tioned.

According to Ext. M-1 which is admitted to the worker, shows his engagement as follows :

1.	13-7-88 to 21-8-88	
2.	24-8-88 to 2-10-88	99 days
3.	5-10-88 to 23-10-88	
4.	1-12-88 to 9-1-89	
5.	12-1-89 to 20-2-89	99 days
6.	23-2-89 to 12-3-89	
7.	4-7-89 to 12-8-89	
8.	15-8-89 to 23-9-89	93 days
9.	26-6-89 to 8-10-89	
10.	2-2-90 to 13-3-90	
11.	16-3-90 to 24-4-90	99 days
12.	27-4-90 to 15-5-90	
13.	28-1-91 to 8-3-91	
14.	11-3-91 to 19-4-91	99 days
15.	22-4-91 to 10-5-91	
16.	13-5-91 to 21-6-91	
17.	24-6-91 to 2-8-91	99 days
18.	5-8-91 to 23-8-91	
19.	12-3-94 to 31-3-94	20 days
20.	1-4-94 to 30-4-94	26 days

There was joint inspection of documents and accordingly list was prepared which is present in ID No. 164/2000. The chart of the work reveals as under :

1988	13-7-88 to 31-7-88	= 15 days	
	1-8-88 to 16-8-88	= 14 days	29 days
1989	4-1-89 to 31-1-89	= 22 days	
	1-2-89 to 28-2-89	= 23 days	
	1-3-89 to 10-3-89	= 10 days	110 days
	11-7-88 to 31-7-89	= 20 days	
	1-9-89 to 30-9-89	= 28 days	
	1-10-89 to 8-10-89	= 07 days	
1991	1-2-91 to 28-2-91	= 25 days	
	1-3-91 to 31-3-91	= 29 days	
	1-4-91 to 30-4-91	= 27 days	
	13-5-91 to 31-5-91	= 16 days	170 days
	1-6-91 to 30-6-91	= 28 days	
	1-7-91 to 31-7-91	= 28 days	
	1-8-91 to 23-8-91	= 17 days	
1994	12-5-94 to 31-5-94	= 18 days	44 days
	12-94 to 31-12-94	= 26 days	
1995	2-1-95 to 31-1-95	= 26 days	40 days
	1-2-95 to 16-2-95	= 14 days	

Even after what is shown in the engagement card and the statement prepared in joint inspection, if they are clubbed together, it is to made out that the worker has completed 240 days work in any of the calendar year. ID No. 190/2000 Moolchand S/o Sh. Natthulal.

Worker's allegation is that he was engaged as daily wager/casual labour in IVRI during 1-7-92 to 10-5-94 as per the certificates issued by the management A1 to annexure A6 to the statement of claim, but the worker has not filed annexure 3 to 6, only one A2 unsigned typed details is filed which shows following details :

1.	1-7-92 to 30-9-92	— 92 days
2.	25-2-93 to 25-4-93	— 64 days
3.	10-2-94 to 10-5-94	— 89 days
	Total	— 245 days

Whereas the engagement card shows following details :

2-7-92 to 31-7-92	30 days
1-8-92 to 30-9-92	
26-2-93 to continue	
1-3-93 to 31-3-99	31 days
1-4-93 to 21-4-93	21 days
1-2-94 to 28-2-94	18 days
1-3-94 to 31-3-94	29 days
1-4-94 to 30-4-94	29 days
1-5-94 to 10-5-94	7 days

According to worker's own showing he has worked only 245 days in 3 calendar years.

Muster roll details as submitted by the opposite party shows following details :

1992	87 days
1993	34 days

1994	36 days	1988	— 56
1995	41 days	1989	— 73

ID No. 186/2000 Omkar S/o Sh. Beniram.

Worker's allegation is that he worked as daily wager worker/casual labour in IVRI during 27-1-86 to 15-5-90 as per the certificates A1 to A6 enclosed with statement of claim, showing following details :

A1.	27-1-86 to 5-4-86 1-5-86 to 30-5-86	No. of working days not mentioned.
A2.	13-3-88 to 21-8-88 24-8-88 to 30-9-88	No. of working days not mentioned.
A3.	12-2-89 to 23-3-89 26-3-89 to 4-5-89 7-5-89 to 25-5-89	No. of working days not mentioned.
A4.	9-7-87 to 16-7-87 7-87 to 25-8-87 28-8-87 to 15-8-87	No. of working days not mentioned.
A4.	16-12-86 to 24-1-87 10-3-87 to 28-3-87 27-1-87 to 7-3-87	No. of working days not mentioned.
A5.	2-2-90 to 13-3-90 16-3-90 to 24-4-90 27-4-90 to 15-5-90	No. of working days not mentioned.
A6.	Employment registration card.	

As per engagement card Ext. M-1 details are as follows :

27-1-86 to 25-4-86	89 days
1-5-86 to 30-5-86	30 days
16-12-86 to 24-1-87	
27-1-87 to 7-3-87	99 days
10-3-87 to 28-3-87	
9-7-87 to 19-7-87	
17-7-87 to 25-8-87	64 days
28-8-87 to 15-9-87	
13-7-88 to 21-8-88	
24-8-88 to 2-10-88	99 days
5-10-88 to 23-10-88	
12-2-89 to 23-3-89	
26-3-89 to 4-5-89	99 days
7-5-89 to 25-5-89	
2-2-90 to 13-3-90	
16-3-90 to 24-4-90	99 days
27-4-90 to 15-5-90	

Muster roll details as submitted by the opposite party shows following details :

1986	— 129
1987	— 135

From the perusal of above evidence it is clear that the workers have not completed 240 days in any of the calendar years.

It has been argued that the juniors to the workers have been retained in the service whereas, the workers have not been retained. The representative of the opposite party has argued that no seniority list is maintained so far as casual labours are concerned. Therefore, this argument is not sustainable that juniors to the workers have been retained in the service.

It has been held in (2005) 8 Supreme Court Cases 750 Surendra Nagar District Panchayat vs. Dhyabhai Amarsinh that "in absence of regular employment of workmen, employer is not expected to maintain seniority list of employees engaged on daily wages-casual labour/temporary employee". It is also held in the same case that "only when such a list is proved to be in existence and then not produced before the court, the court must first be satisfied that the evidence is in existence and could have been produced, before it is entitled to draw adverse inference. As regard non-compliance, with Sections 25-G and 25-H suffice it to say that the witness examined by the appellant has stated that no seniority list was maintained by the department of daily-wagers. In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority, no relief could be given to him for non-compliance with provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have been produced."

The aforesaid case law is relevant to the present case which is reproduced below :

"2. This appeal is directed against the judgment of the Division Bench of the High Court confirming the order of the Single Judge and that of the Industrial Tribunal whereby the appellant was directed to reinstate the respondent. The brief facts of the case are that the services of the respondent were terminated by an order dated 15-8-1985. On 1-6-1992 i.e. nearly after 7 years the respondent sent a demand notice to the appellant and ultimately the dispute of termination of service of the respondent was referred to the Industrial Tribunal. The respondent filed a claim petition alleging therein that he was in service of the appellant for more than ten years at the wages of Rs. 10 per day till it had been terminated by an order dated 15-8-1985.

It is alleged that before the order of termination was issued, provisions of the Industrial Disputes Act were not complied with. An application was moved before the Labour Court for direction to the appellant employer to produce muster roll and salary register from the year 1976 to 1986. The appellant entered appearance and filed its counter alleging that the respondent himself stopped coming to work; that there was a gross delay of seven years in raising the dispute. That the workman was never engaged permanently and he was employed for miscellaneous work i.e. whenever there was work he was called for it. It was alleged that the workman had not completed 240 days of continuous service in the 12 months preceding the date of termination of his services. He had worked for 114 days in the year 1982, 63 days in 1983, 124 days in 1984 and 64 days in 1985 and thus there was no necessity for complying with legal requirement, before terminating the service of the respondent of following the procedure laid down in Section 25-F of the Industrial Disputes Act.

3. The respondent examined himself and deposed that he was employed for 10 years at the salary of Rs. 470 per month whereas Mr. Vinod Misra, an official from the appellant side was examined to show that the workman never worked for 240 days in a year.

4. Before the Labour Court, oral evidence was given by the respondent. The Labour Court relied on the oral evidence of the respondent workman and drew an adverse inference for non-production of muster roll and the salary register from the year 1976 to 1986 and held that the respondent workman had worked for more than 240 days and therefore his termination was illegal. The Labour Court directed the reinstatement of the workman with back wages of 20% from the date of reference, for non-compliance with Sections 25-F, 25-G and 25-H.

5. The learned Single Judge dismissed the petition. A letters patent appeal was filed and the Division Bench held that the Labour Court was right in holding that the workman by his oral statement had proved his case. Not only that the workman under Ext.-4 called upon the appellant Panchayat to produce his salary register and muster roll from 1976 to 1986 and also to produce the seniority list of the workmen, which were not produced. On the non-production by the appellant of the said documents, the Division Bench held that the Labour Court had rightly drawn an adverse inference against the appellant and rightly held that the workman had worked for 240 days in a year. The Court also held that one junior was retained, whereas service of the respondent was terminated. Consequently, the letters patent appeal was dismissed. That is how the appellant has come before this Court, challenging the order of reinstatement.

6. It is contended by the learned counsel for the appellant Panchayat that the Supreme Court by its number

of decisions has categorically held that the initial burden of proof that the workman has worked for 240 days in a year preceding the date of termination, lies on the workman and that the workman has failed to discharge that burden. It is further urged that it is not the case of the respondent workman that he was in continuous service of the Panchayat for one year within the meaning of sub-section (1) of Section 25-B of the Industrial Disputes Act. The case of the respondent workman was that he had worked for 240 days with the employer in a year, therefore, necessarily the dispute raised by the workman falls under sub-section (2) of Section 25-B of the Industrial Disputes Act, to be regarded as his continuous service, wherein the workman had to prove that he had actually worked for 240 days during the period of 12 calendar months preceding the date of termination to be retrenchment under Section 2(oo) of the Act. The non-production of the 10 years record by the employer does not call for drawing an adverse inference against the Panchayat. On the other hand, learned counsel for the respondent has urged that the employer being in possession of the relevant material, is duty-bound to produce it and non-production of the record, called for by the Labour Court, the Labour Court was right in drawing an adverse inference. He further contended that the employer being in possession of the necessary material, burden lies on the employer to prove that the workman had not worked for 240 days in a year preceding the relevant period.

7. On the basis of the rival contentions, it is necessary for us to consider the scope and ambit of the relevant provisions, namely, Section 2(oo), Section 25-B and Section 25-F of the Industrial Disputes Act. The appropriate provisions are reproduced below:—

“2 (oo) ‘retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

- (a) Voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;

25-B. Definition of continuous service.— For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident which is no illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;
- (2) where as workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case:
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than—
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.
- Explanation*—For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—
- (i) he has been laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
 - (ii) he has been on leave with full wages, earned in the previous year;
 - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
 - (iv) in case of female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.
- 25-F. Conditions precedent to retrenchment of workmen**
—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—
- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
 - (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
 - (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in Official Gazette.”
- As per Section 25-F, no workman who is in continuous service for not less than one year under an employer shall be retrenched by that employer unless conditions laid therein are fulfilled. The retrenchment is defined in clause (oo) of Section 2 of the Industrial Disputes Act 14 of 1947 (hereinafter referred to as the Act). Under the definition termination of the service of a workman by the employer for any reason whatsoever, otherwise than as a punishment, by way of disciplinary action, would constitute retrenchment except in cases accepted in the Section itself, they are (i) a voluntary retirement of a workman; (ii) retirement of a workman on reaching the age of superannuation; (iii) termination of the service of a workman as result of non-renewal of the contract of employment; or (iv) termination of the service on the ground of continued ill health of the workaman. Unless these reasons are shown to have existed and proved, termination by the employer of the service of a workman for any reasons, would constitute retrenchment. Therefore, if the employer is to retrench the workman employed in his industry who is in continuous service he has to follow the provisions of Section 25-F of the Act. To attract provisions of Section 25-F, the workman claiming protection under it, has to prove that there exists relationship of employer and employee; that he is a workman within the meaning of Section 2(s) of the Act; the establishment in which he is employed is an industry with the meaning of the Act and he must have put in not less than one year of continuous service as defined by Section 25-B under the employer. These conditions are cumulative. If any of these conditions is missing the provisions of Section 25-F will not be attracted. To get relief from the court the workman has to establish that he has right to continue in service and that his service has been terminated without complying with the provisions of Section 25-F of the Act. The Section postulates three conditions to be fulfilled by an employer for getting a valid retrenchment, namely :—
- (i) one month's clear notice in writing indicating the reasons for retrenchment or that the

- workman has been paid wages for the period of notice in lieu of such notice;
- (ii) payment of retrenchment compensation which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof, in excess of six months;
 - (iii) a notice to the appropriate Government in the prescribed manner.

8. To attract the provisions of Section 25-F, one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year. Section 25-B of the Act defines continuous service for the purposes of Chapter V-A "Lay-off and Retrenchment". The purport of this section is that if a workman has put in uninterrupted service of the establishment, including the service which may be interrupted on account of sickness, unauthorized leave, an accident, a strike which is not illegal, a lockout or cessation of work, that is not due to any fault on the part of the workman, shall be said to be continuous service for that period. Thus the workman shall be said to be in continuous service for one year i.e. 12 months irrespective of the number of days he has actually worked with interrupted service, permissible under Section 25-B. However, the workman must have been in service during the period i.e. not only on the date when he actually worked but also on the days he could not work under the circumstances set out in sub-section (1). The workman must be in the employment of the employer concerned not only on the days he has actually worked but also on the days on which he has not worked. The import of sub-section (1) of Section 25-B is that the workman should be in the employment of the employer for the continuous, uninterrupted period of one year except the period the absence is permissible as mentioned hereinabove. Sub-section (2) of Section 25-B introduces the fiction to the effect that even if the workman is not in continuous service within the meaning of clause (1) of Section 25-B for the period of one year or six months he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) of sub-section (2). By the legal fiction of sub-section (2)(a)(i), the workman shall be deemed to be in continuous service for one year if he is employed underground in a mine for 190 days or 240 days in any other case. Provisions of the section postulate that if the workman has put in at least 240 days with his employer, immediately prior to the date of retrenchment, he shall be deemed to have served with the employer for a period of one year to get the benefit of Section 25-F.

9. For the purposes of calculation of number of days worked by the employee, by fiction his days of absence from work have been included if the workman (1) has been laid off under an agreement or as permitted by Standing

Orders made laid off under an agreement or as permitted by Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947, or in any other law applicable to the industrial establishment; (ii) has been on leave with full wages, earned in the previous year; (iii) has been absent due to temporary disablement caused by accident arising out of and in the course of employment; and (iv) has been on maternity leave, in case the employee is a female, however, that the total number of such maternity leave does not exceed 12 weeks.

10. In Surendra Kumar Verma v. Central Government Industrial Tribunal-cum Labour Court speaking for a three-Judge Bench, O. Chinnappa Reddy, J. while considering the original provisions of Section 25-B of the Act, has said that Section 25-F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present Section 25-B(2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months.

11. In the matter of Mohan Lal v. Bharat Electronics Ltd. this Court has said that sub-section (2) of Section 25-B comprehends a situation that where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period 12 months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. It is not necessary for the purpose of sub-section (2) (a) that the workman should be in service for a period of one year and that his service is continuous service within the meaning of sub-section (1). If his case is governed by sub-section (1) then it need not be covered by sub-section (2) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for one year but has rendered service for a period 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date, being the date of retrenchment.

12. In the matter of Workmen v. American Express International Banking Corp. The Court has said that the Explanation to Section 25-B is not exhaustive. It does not purport that only those days which are mentioned in the Explanation to Section 25-B(2) of the Act should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not worked on those days. The Court said that the expression "actually worked under the employer" is only classificatory and cannot be used to limit the expanse of the main provision. The expression "actually worked under

the employer' is capable of comprehending the days during which the workman was in employment and was paid wages by the employer and there is no reason why the expression should be limited by the Explanation.

13. In the matter of Standard Motor Products of India Ltd. v. A. Parthasarathy this Court has said that the actual working for less than 240 days would include Sundays and other paid holidays if the workman is in employment of the employer although for less than a period of 12 months.

14. These decisions in unambiguous words laid down that sub-sections (1) and (2) of Section 25-B comprehend different situations for the calculation of continuous service for not less than one year and continuous service which is less than one year but for 240 days in 12 months preceding the date of termination under an employer.

15. In Mohan Lal v. Bharat Electronics Ltd. it is said by this Court that before a workman can claim retrenchment not being in consonance with Section 25-F of the Industrial Disputes Act, he has to show that he has been in continuous service of not less than one year with the employer who had retrenched him from service.

16. In Range Forest Officer v. S. T. Hadimani (SCC at p.26, para 3) this Court held that :

"In our opinion the tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

17. More recently, in Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan, Municipal Corp., Faridabad v. Siri Niwas and M.P. Electricity Board v. Hariram this Court has reiterated the principle that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.

18. In the light of the aforesaid, it was necessary for

the workman to produce the relevant material to prove that he had actually worked with the employer for not less than 240 days during the period of twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that the workman who claimed to have worked with the appellant for such a long period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The courts below have wrongly drawn an adverse inference for non-production of the record of the workman for ten years. The scope of inquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25-F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25-B(1) of the act. In the facts and situation and in the light of the law on the subject, we find that the respondent workman is not entitled to the protection or compliance with Section 25-F of the Act before his service was terminated by the employer. As regards non-compliance with Sections 25-G and 25-H suffice it to say that witness Vinod Misra examined by the appellant has stated that no seniority list was maintained by the department of daily-wagers. In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority, no relief could be given to him for non-compliance with provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have been proved.

19. As a result of the discussion above, the appeal is allowed. The orders passed by the Labour Court and the High Court are set aside. However, as a result of the order passed by the Labour Court, if the respondent was employed in service, the wages paid to him shall not be recovered. There shall be no order as to the cost.

It is been held in various cases that it is worker to prove that he has continuously worked for 240 days in a calendar year preceding the date of his termination. But the worker has failed to prove that he has worked for 240 days preceding the date of termination.

It is admitted fact that no appointment letter has been issued to the workers. The opposite party has argued that casual mazdoors are engaged for work of casual or seasonal/intermittent nature of work which is not of full time nature for which regular posts can not be created. It is further argued that casual mazdoors are engaged for 40 days at a time, 100 days in six months or 200 days in a year this is as per the directions of ICAR, Krishi Bhawan, New Delhi, dated 25-6-86 and the opposite party has to comply with the directions given by the ICAR. The following circulars of ICAR are relevant with the facts of the present case :

"No. F. 42-10/77-EE/V

Dated the 25-6-86

To

The Directors of all the Institutes,
Under the Indian Council of Agricultural Research.
Subject : Engagement of casual labourers under the
ICAR-guidelines regarding.

Sir,

In connection with the seasonal work, the institutes have to employ workers on casual basis for short duration. Instances have however, come to the notice of the Council that casual workers are continued by the Institutes for indefinite periods, with the results that the casual workers start claiming appointments on regular basis. In some of the Institute the workers have gone to the Labour Court. Since the employment of casual workers is only for attending to jobs of casual nature their continued employment as such by the Institute is irregular.

The matter has been considered in the Council and it has been decided that the Institute should not employ casual workers for a period of more than 40 days at a time. It should also be ensured that the total period of a casual worker should be less than 100 days during the 6 months or less than 200 days in a year.

Directors of all the institutes are accordingly requested to ensure compliance of the above instructions.

Yours faithfully,
Sd/-

(K. S. KRISHNASWAMY)
ADDITIONAL SECRETARY (AR)

No. F.21(8)/88-Cdn.I

Dated the 22-1-1987

To

All the Directors of Research Institutes.
Subject : Problems relating to appointment of casual workers in the ICAR-Institutes.

Sir,

The problems arising out of the appointment of casual labourers in the various Institute of ICAR have been

engaging the attention of the headquarters for quite sometime.. These problems have been analysed and examined in relation to the existing legal and administrative instructions in the matter. It has been decided with the approval of the DG, ICAR, that the following steps may please be taken for overcoming these problems.

1. No casual labour will be employed by any Institute over and above the existing ones.
2. Steps should be taken to introduce modern technology so that the process of mechanization sets in.
3. Works which are purely casual/seasonal may be given on contract basis.

If any of the Institutes has some peculiar problems relating to the subject mentioned above, the same will however, be considered by the Council, based on the merits of the case. Such cases may be sent to the concerned branches of the headquarters.

Sd/-

(C.R. MOHAPATRA)
DEPUTY SECRETARY (AS)

No.F. 24-6/88-CDN

Dated the 10-9-88

To,

All the Directors/Project Director.

Subject : Guidelines relating to appointment of casual labourers in the ICAR institute.

Sir,

In continuation of our earlier letter No. 21(8)/86-CDN dated 22-1-87 (copy enclosed) it has been decided to adhere to the following guidelines :

- (i) Persons on daily wages should not be recruited for work of regular nature.
- (ii) Recruitment of daily wages may be made only for work which is of casual or seasonal or intermittent nature or work which is not of full time nature, for which regular posts can not be created.
- (iii) The work presently being done by the regular staff should be re-assessed to measure the output productivity with a view to entrusting the work done by the casual workers to the regular employees.
- (iv) The casual workers may be given one paid weekly off after 6 days of continuous work.
- (v) The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Institutes/Project Directors/NRCs with a paid weekly off as

mentioned above. They will, however, in addition be paid for a National Holiday, if it falls on a working day for the casual workers.

- (vi) Efforts should be made to entrust all the items of work now being handled by the casual workers to the existing regular staff failing which the creation of additional regular posts may be considered.

(2) All the Directors/Project Directors are requested to revise the appointment of casual workers in their institutes. They are requested to submit the information in respect of the following :

- Number of casual workers who have been entrusted with the same nature of work as that of a regular employee.
- Number of casual workers who are doing the work different in nature from the work being done by regular workers.

The above information is required urgently to decide the further course of action.

3. The regularization of the services of the casual workers will continue to be governed by the instructions already issued in this regard. While considering such regularization, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit in the particular post.

No. F.24(6)/88-CDN Dated the 16th December, 1988
To

All the Directors/Project Director.

Subject : Guidelines relating to appointment of casual workers in the ICA R institutes.

Sir,

In continuation of our letter of even number dated the 16th September, 1988, I am directed to say that the following decisions have been taken based on the information furnished by your institutes :—

(a) The Casual workers who have been entrusted with the same nature of work as is being done by a regular employee may be paid @ 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work for 8 hours a day.

(b) The casual workers of your Institute who are doing the work different in nature from the work of a regular employee may be paid only the minimum wages notified by the Ministry of Labour of the State Govt./Union Territory Administration whichever is higher as per the Minimum Wages Act, 1948 and in accordance with the relevant notification.

The exact number of the two categories of casual workers in your Institute who will be paid as per the rates indicated at (a) and (b) above are given in the annexure.

The number of casual workers in both the categories should be frozen and in no case it.....the figures indicated in the annexure.

In so far as the regularization of casual workers who are doing the same type of job as that of a regular employee is concerned, the same should be done according to the existing instructions as and when vacancies arise. The places vacated by such casual workers should not be filled up.

Yours faithfully,
Sd/-

(C.R. MOHAPATRA)
DEPUTY SECRETARY (M)

Sl. No.	Name of the institute	Number of casual workers who have been entrusted with the same nature of work as that of a regular employee	Number of casual workers who are doing the work different in nature from the by regular workers
1.	Indian Veterinary Research Institute, Izatnagar (UP) Revised figures sent vide This office letter No. F.12-1/73- MRDPC dt. 18-7-89 to the Council.	155	117
		Nil	272

No. F.24(6)/88-Cdn. Dated the 26th October, 1989

To

All Directors of the ICAR Research Institutes.

Subject : Guidelines relating to the appointment to the casual workers in the ICAR Institutes-payments of higher rates of wages to the casual workers-decision reg.

Sir,

In continuation of the Council's letter of even number dated the 16th December, 1988, it has been decided by the ICAR that the casual workers working at the Institutes/ICAR headquarters may be paid higher rates of wages w.e.f. 7-6-88 as per orders of the Department of Personnel and Training's OM No. F. 49014/2/86-Estt. (C) dt. the 7th June, 1988 (copy enclosed).

It is also requested that the results of the review as per decisions of the Departments of Personnel and Training may be intimated to the Council immediately by 20-11-1989, positively.

Yours faithfully,
Sd/-

(KIRHORILAL)

DEPUTY SECRETARY (GA&C)

Government of India

F. No. 49014/2/86-Estt. (C)

Ministry of Personnel, Public Grievances and Pension,
Department of Personnel and Training, North Block,
New Delhi-110001, dated the 7-6-88.

OFFICE MEMORANDUM

Subject : Recruitment of casual workers and persons on daily wages review of policy.

The policy regarding engagement of casual workers in Central Government of offices has been reviewed by Government keeping in view the judgment of the Supreme Court delivered on the 1st January, 1986 in the Writ Petition filed by Shri Surinder Singh and other vs. Union of India and it has been decided to lay down the following guidelines in the matter of recruitment of casual workers on daily wage basis :—

1. Persons on daily wages should not be recruited for work of regular nature.
2. Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
3. The work presently being done by regular staff should be reassessed by the administrative departments concerned for output and productivity to that the work being done by the casual workers should be entrusted to the regular employees. The departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
4. Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for the work of 8 hours a day.
5. In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the minimum Wages Act, 1948. However, if a department is already paying daily wages at a Higher rate, the practice could be daily wages at a Higher rate, the practice could be continued with approval of its financial adviser.
6. The casual workers may be given one paid weekly off after six days of continuous work.

7. The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned at (vi) above. They will, however, in addition, be paid for a National Holiday, if it falls on a working day for the casual workers.

8. In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.
9. Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.
10. The regularization of the services of the casual workers will continue to be governed by the instructions issued by this department in this regard. While considering such regularization, of a casual worker may be given realization in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.
11. If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and then Department of Personnel and Training.

All the administrative Ministries/Departments should under take a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved :—

- (a) All eligible casual workers are adjusted against regular posts to extent such regular posts are justified.
 - (b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
 - (c) The remaining casual workers not covered by (a) and (b) above are discharged from service.
2. The following time limit for completing the review has been prescribed in respect of the various Ministries/ Departments :—

- | | |
|--------------------------|---------|
| (a) Ministry of Railways | 2 Years |
|--------------------------|---------|

- (b) Department of Posts, Deptt. 1 year
of Telecommunications and Deptt.
of Defence Production
- (c) All other Ministries/Departments/ 6 months
Offices.

Each Ministry should furnish a quarterly statement indicating the progress of the review in respect of the Ministry (Proper) and all attached/subordinate offices under then to the Department of Personnel and Training in the proforma attached. The first quarterly return should be furnished to this Deptt. by the 10th October, 1988.

3. By strict and meticulous observance of the guidelines by all Ministries/Departments, it should be ensured that there is no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged above is duly completed. Each head of office should also nominate an officer who would scrutinize the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not.

4. Ministry of Finance etc. are requested to bring the contents of this office memorandum to the notice of all the appointing authorities under their respective administrative control for strict observance. Cases of negligence in the matter of implementing these guidelines should be viewed very seriously and brought to the notice of the appropriate authorities for taking prompt and suitable action against the defaulters.

Sd/-

(D.P. BAGCHI)

Joint Secretary to Govt. of India

No. F. 24(6)/88-Cdn.

Dated the 19th September, 1996

To

All the Directors/Project Directors of the ICAR Institutes/NRCs.

Subject : Problems relating to appointment of casual workers in the ICAR Institutes.

Sir,

The Council *vide* letter No. 2198/86-Cdn. dated 22nd January, 1987 has issued instructions to all Directors/Project Directors of the Institutes with the approval of the Director General, ICAR that the following steps should be taken for overcoming the problems relating to the appointment of casual workers, apart from other guidelines formulated from time to time by the Council on the basis of instructions received from the Department of Personnel and Training—

- (i) No casual labour will be employed by any institute over and above the existing one.
- (ii) Steps should be taken to introduce modern technology so that the processes of mechanization sets in.

- (iii) Works which are purely casual/seasonal may be given on contract basis.

It has now been observed that most of the Institutes have not been observing the guidelines/instructions issued by the Council from time to time. The Finance Division of the Council has now made the following observations :—

1. It is not understood as to how the work of regular nature has gone up suddenly necessitating abnormal increase in the strength of casual workers under category (a), when there was neither heavy retirement nor any increase in the farm area.
2. As all the Institutes have large farm area, it is undisputed that casual workers are required to be employed, during season to do work of seasonal nature. In fact, larger number of labour is required to be employed on casual basis during the season than off season. Therefore, the strength of casual workers under category (b) is bound to be higher than the strength in the category (a). But most of the proposals received in the council from various Institutes are contrary to this norms which do not appear to be logical.
3. Since the Institutes are having large farm area necessitating employment of large number of casual labour during season, it may be describable that objective norms with regard to the strength of casual labour per acre of land during crops season is developed.
4. The employment of contract labour, as far as possible, on agricultural farms of the Institutes may be explored.
5. All Directors/Project Directors are requested to examine the above observations made by the finance Division with reference to the guidelines already issued by the Council and send their comments thereon.

Yours faithfully,

Sd/-

(N. SOMAN)

DEPUTY SECRETARY(GA&C)"

The representative also argued that the ICAR has also issued directions that no casual labour should be employed by any institute over and above the existing one and steps should be taken to introduce modern technology so that the process of mechanization sets in. It has also made policy that works which are purely casual/seasonal may be given on contract basis.

The authorized representative of workers has argued that the policy made by the ICAR are the examples of unfair labour practice just to deprive of the workers to gain the service with the opposite party.

It is noteworthy to mention that back door entry is prohibited. It is to be seen whether the restrictions imposed are arbitrary or illegal?

It has been argued on behalf of the workmen that actual working for not less than 240 days would include Sundays and other paid holidays. In view of the argument of the workmen it has to be seen whether the workers are casual daily rated workers or regularly appointed permanent workers. It is evident from the evidence on record that all the workmen were not in continuous service within the meaning of sub-section 1 of Section 25 B of the Industrial Disputes Act, 1947 for a period of 1 year preceding the date of termination. Section 25 B of the Industrial Disputes Act, 1947 is very much clear which relates to permanent workers.

The Industrial Disputes Act, 1947 does not distinguishes the retrenchment of a permanent employee and the daily rated casual workers. The casual workers who are not in continuous service for a period of 1 year have to be looked in to under section 25 B (2) of the Industrial Disputes Act, 1947.

In a case where the worker worked for 235 days from July, 94 to July, 95 the Labour Court held that if the gazetted holiday and weekly rest were included then definitely the workman has worked for more than 240 days under the management. Hon'ble Supreme Court in (2006) SCC 764, Huda vs. Jagmal Singh held that "we are unable to appreciate the approach made by the Labour Court in calculating the statutory period of 240 days in a year. In our opinion, both the Labour Court and the High Court have failed to appreciate the fact that the respondent has failed to complete the statutory period of 240 days in a year to entitle him for claiming any benefits whatsoever, as already noticed evidence has been led to the said fact before the Labour Court but still the issue of attendance of the respondent has been decided in his favour. This apart, the respondent was appointed only as daily-wage earner and not as a permanent employee of the appellant and hence the respondent cannot claim any right to the post in question and that no right has accrued to him to claim any benefits from the appellant. This fact remains that the respondent has not worked for the statutory period of 240 days, which has been clearly established by the appellant. It is settled law that the workman has to prove that he had worked for 240 days. In the instant case, the workman has not established that he has served the appellant for the statutory period of 240 days." The Hon'ble Supreme Court has in para 7 of the said case law went further that "in the result, the order passed by the Labour Court and the non-speaking order passed by the High Court are liable to be set aside. We do so accordingly and allow the civil appeal filed by the appellant and set aside the order passed by the Labour Court and the High Court ordering reinstatement and back wages. No costs"

During the course of the argument the representative of the workers has admitted that workers have not completed 240 days work in the calendar year and from the documents it is made out that the workers were casual mazdoor, they are not regularly appointed permanent employees.

It is also argued forcefully that the employer has resorted to unfair labour practice as the orders have flown from the Government for not employing the workers for beyond a period of more than 40 days at a time. The Government has its inherent powers to regulate and prescribe guidelines for the appointment of the casual labours. It cannot be termed as unfair labour practice. In case there are 100 casual workers then it has to be seen that the institution does not adopt pick and choose and engage a worker to enable the institute to have employment for more days discarding others, if an unfair formula is adopted so that every casual mazdoor gets equal opportunity to earn then there is no arbitrariness or illegality.

It is pertinent to mention here that the management produced casual labour registration card Ext. M-1 in almost all cases. The worker on the other hand filed employment certificate in respect of their work in IVRI. On 30-10-2002 the authorized representative of the workers filed the joint inspection report signed by the representative of the opposite party, which is paper No. 15 in the said industrial dispute. In the above circumstance the chart prepared on the basis of Muster Roll/Wage bill are authentic and have to be relied upon. However, the representative of the workers has argued that original records of Muster Roll was not shown to him and instead Xerox copy of Muster Roll was made available. It is pertinent to mention here that Sh. S.K. Gupta, Administrative Officer of the IVRI the representative of the workers that the original records of Muster Roll is highly bulky and it would be cumbersome exercise to make all records available for inspection or perusal. He was requested to make random checking of the Muster roll from the original and get the entries submitted by the management verified. Accordingly the representative of the workers made random checking of the originals. The representative of the workers accordingly filed application paper No. 14 in I.D. case No. 164/2000. I have perused the report paper No. 15, signed by the representatives of the parties, wherein it is written that "as per the order dated 21-10-2002 of the Hon'ble Presiding Officer, CGIT-cum-Labour Court, Lucknow, the Charts/ Statements of the labourers have been inspected/verified as per original Muster Rolls available at IVRI, Izatnagar, Bareilly." The contents of above said paper is reproduced below:

"Subject:— Filing of Joint Inspection Report.

Sir,

As per order dated 21-10-2002 of the Hon'ble Presiding Officer, CGIT-cum-Labour Court, Lucknow, the Charts/Statements of the Labourers have been inspected

verified as per original Muster Rolls available at IVRI, Izatnagar, Bareilly.

In this connection, ticks have been marked on the charts/statements and copy of the original inspected charts/statements along with list of labourers are enclosed herewith for kind perusal and necessary action of the Hon'ble CGIT, Lucknow.

-sd-

(V.K. GUPTA)

-sd-

(GYAN PRAKASH)

Management's Representative Workmen's Representative

The opposite party has alleged that IVRI is not an industry as defined under Section 2 (J) of the Industrial Disputes Act, 1947. It is submitted that it is a research institution and for the purpose of research large farms, dairy etc., there the workers of casual/seasonal nature type are engaged to meet temporary needs. Casual labours are also engaged when projects are sanctioned by the sponsors. The nature of work of the institution is such that it requires casual labour from time to time.

The fact is that IVRI is a research institute under the management and control of ICAR, which functions under the Department of Agriculture, Research and Education. It is also a fact that the Indian Council of Agricultural Research (ICAR), N. Delhi is an autonomous body registered under Societies Registration Act, 1860. It was set up for undertaking scientific research in agriculture, animal husbandry and allied subjects. The worker on the other hand has stated that IVRI is not a purely research institute on the contrary it is a big educational, commercial place where large quantity of medicines are sold by the opposite party and in addition to this milk, old agricultural equipments, animal flesh, eggs are also sold. In this way IVRI earns millions of rupees by selling the same.

Shri Sunil Gupta the witness of the opposite party has stated "AKASMIK SHARAMIKON KI KOI VARISHTA/SUCHI NAHI BANTI. KABI KISI UNIT KA KAAM BARTH JATA HAI YA VISHES ADMION KI AWASHKYATAHOTI HAI JAISAKI HARVESTING ADI MAIN. MAIN NAHI BATA SAKTA KI DAIRY UNIT MAIN KIN, KIN MAHINO MAIN ADHIK SHRAMIK RAKHE JATE HAIN."

"IVRI MAIN JANVARON ADI KE LIYE VACINE TAIR KI JATI HAI TATHA BECHAJATA HAI."

It has also come on the record of the workers that the institute is running in profit with the enhancement of profit.

In the above background he case law 2000-III-LLJ (Suppl) Director, Central State Farm, Suratgarh vs. State of Rajasthan and others, 1477 is relevant. Paras 8 to 13 are relevant and the same is reproduced below:

"8. It has been held time and again that an establishment may be held to be an industry within the meaning of section 2 (j) of the Act provided it is not performing the regal and sovereign functions

and the activities are of such a nature which cannot be carried on by a private citizen or a group of private citizens. Vide *State of Bombay & Ors. v. The Hospital Mazdoor Sabha & Ors.* AIR 1960 SC 610 : 1960-1-LLJ-251 : *Ahmedabad Textile Industries Research Association (supra)*; and *Bangalore Water Supply and Sewerage Board v. Rajappa* AIR 1978 SC 548 1978-I-LLJ-349.

9. The test to be an 'industry' has been laid down as under :

"Thus, the manner in which the activity in question is organized or arranged, the condition of co-operation between employer and employees, necessary for its success and its object to render material service to be community should be regarded as some of the features which could be distinctive of the activity to which Section 2(j) applied :"

10. In *Hospital Mazdoor Sabha (supra)*, the Court explained as under :

"Such an activity generally involved the co-operation of the employers and the employees; and its object is the condition of human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual nor must it be for oneself nor for pleasure."

11. The issue has also been considered in *Bombay Telephone Canteen Employees Association v. Union of India* 1997 (6) SCC 723 : 1997-II-LLJ-647, *General Manager Telecome v. A. Srinavasa Rao* 1997 (8) SCC 767 : 1998-ILLJ-255 and *All India Radio v. Santosh Kumar & Anr.* AIR 1998 SC 951 : 1998-I-LLJ-817, whereas it has been held that where the activity was not of such a nature which cannot be carried out by private citizens, the establishment may be held to be an 'industry' provided it fulfills the other requirements.

12. The activity of the petitioner are required to be examined in view of the above referred legal proposition. The Memorandum of Association of the petitioner company provides that the main object of establishing it is to setup and run agricultural farms for the production primarily of seeds of food grains, oil seeds, vegetables and fruits as well as studying of these crops in various parts of the country, to setup poultry, sheep, pigs and other cattle breeding farms; to undertake development, reclamation and improvement of lands, even the land belonging to private parties on payment or on full cost of these operation to carry on all or any of the business of farmers, producers, processor, exporters, packers and importers of all agricultural produce; of all kinds including dairy, poultry, garden, and Horticulture produce; to carry on business of keepers, producers, importer, exporters

and trades of poultry and cattles of all kind etc. etc. The activities mentioned therein are in such a nature which can be held to be regal and sovereign functions of the State or which cannot be alienated in favour of private citizens or there is any inhibition under any law to carry out such activities by private citizens or group of citizens.

13. Thus, in view of the above, it is held that the petitioner carries on the agricultural operations in an organized manner like a business or trade and, therefore, is an 'industry' within the meaning of Section 2(j) of the Act."

Dealing with the definition of industry under section 2(j) of Industrial Disputes Act, 1947 the Allahabad High Court in second appeal No. 35/2001 dated November 14, 2003 between the State of UP & Others and Deep Chandra & Others referred Agricultural Produce Market Committee v. Ashok Harikuni and another, AIR 2000 SC 3116; 2000(8) SCC 61: 2000-II-LLJ-1382. Dominant nature test and sovereign functions, the construction and repair roads undertaken by PWD could not be said to be sovereign functions. The department was held to be an industry. In para 13 of the case law Hon'ble High Court of Allahabad has reproduced para 21 of AIR 2000 Sc 3116 which is as under :

"21. In other words, it all depends on the nature of power and the manner of its exercise. What is approved to be 'sovereign' is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil Courts. The other functions of the state including Welfare activity of State could not be construed as 'sovereign' exercise of power. Hence, every governmental function need not be 'sovereign'. State activities are multifarious. From the primary sovereign power, which is exclusively inalienable could be exercised by the sovereign alone, which is not subject to challenge in any civil Court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2(a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be 'sovereign' in nature would not mean every other functions under the same statute to be also sovereign. The Court should examine the statute to sever one from the other by comprehensively examining various provisions of that statutes. In interpreting any statute to find it is 'industry' or not we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which

brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This is to be benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the frame work of the law but endeavour should not be in all circumstances to exclude any enterprise from its ambit. That is why Courts have been defining 'industry' in the widest permissible limits and 'sovereign' functions within its limits orbit."

It is also admitted by the witness of the opposite party, Sh. S.K. Gupta in ID No. 164/2000 between Harprasad and Director, IVRI that the medicines are even supplied to the foreign countries on demand although there is no profit motive. It is also admitted by him that milk and cream are sold to the staff at subsidized rate.

On the basis of entire evidence on record I come to the conclusion that here is systematic activity and the same is organized by the co-operation between employer and employee and the goal of production and/or distribution of goods and services are calculated to satisfy human wants and wishes and in the circumstances and established law the opposite party cannot be termed as discharging sovereign function and instead it is an industry.

It is also evident from the records on file that Shri Prem Singh and 81 others casual labours filed various original applications before the Central Administrative Tribunal for regularization of the service and all original applications were dismissed by the Central Administrative Tribunal.

In case of ID No. 68/2000 between Sh. Mohan Lal and Director, IVRI, the representative of the worker conceded on 12-4-2006 that the worker has not completed 240 days but once the Saturdays, Sundays and holidays are taken into consideration for computing 240 days then it will reveal that the worker has worked for 240 days in a year. It is not a case of regular or permanent employee who was employed for continuous work. Therefore, Saturdays, Sundays and holidays cannot be counted in the case. According to the certificate produced by the worker, Sh. Mohan Lal, has worked till 12-11-93, but according to the inspection report of Muster Roll/Wage Bills the worker's last working day is 16-2-95. From the report of the inspection of Muster Roll, which is paper No. 11/2 in the file, the worker has worked only for 40 days in 1995 and 69 days prior to it within 12 calendar months. Thus, the worker has worked only 109 days in 12 calendar months preceding his date of termination. Therefore, it cannot be held that the termination of Mohan Lal is illegal or unjustified and therefore, in ID case No. 68/2000 the worker is not entitled to any relief.

In ID Case No. 70/2000 between Bhawan Prakash and Director, IVRI, the worker though has stated that he

worked from 25-3-85 to 16-2-95 constantly. But the certificates filed by him shows that the worker has worked only for 208 days as casual labour. Other certificates filed by the worker have not been admitted by the representative of the management. More so originals have not been filed by the worker himself. On the other hand the opposite party has filed the Photostat copy of casual labour registration card, paper No. 2/2 the photo and signature of which has been admitted by the worker, which goes to show that the worker was not continuously engaged as stated by the worker in cross-examination. However, on the orders of this Court on joint inspection of Muster Roll/Wage Bills it is found that the worker worked only 77 days in 12 calendar months preceding the alleged dated of termination. It is also clear that the worker has not worked for 240 days in any of the calendar years. It is also made out that the worker did not work a single day in 1993. The worker's disengagement thereafter is not illegal and unjustified as there is no violation of Section 25F. The worker is, therefore, not entitled to any relief.

In ID case No. 71/2000 between Hem Raj and Director, IVRI, the worker has stated that he continuously worked from 27-11-87 to 25-5-93, but from the Ext. M-1, i.e. registration card for casual labour, it is shown that the worker was not terminated on 25-5-93 instead he worked up to 31 October, 1993 and it is also corroborated by the certificate filed by the worker, paper No. 4/5 that he worked up to 31-10-93. In the circumstance, therefore, it cannot be said that the worker was terminated on 25-5-93. The issue is therefore, decided against the worker and the worker is not entitled to any relief. It is also pertinent to mention here that according to the joint inspection report of Muster Roll/Wage Bills it is clear that worker has worked till 31-10-94.

In ID case No. 75/2000 between Daya Ram and Director, IVRI, it is evident that the worker obtained stay from the Court and under the interim orders he worked up to 16-2-95. From the evidence on record it is evident that Shri Daya Ram S/o Sh. Banshi Lal filed OA No. 382/94 for regularization. Dismissing the OA the Central Administrative Tribunal ordered that interim order was subject to decision of the original application and since the original application is dismissed the interim order, if any, stands vacated.

From the joint inspection report of muster Roll/Wage Bills, it is evident that the worker was initially engaged and paid as casual labour. The worker worked for 42 days in 1994, 41 days in 1985 and did not work in 1993, the worker's disengagement on 17-2-95 is not illegal as the interim order of stay vacated. The action of the management, therefore, is not illegal or unjustified. The issue is, therefore, answered against the worker and the worker is not entitled to any relief.

In ID case No. 76/2000 between Vijay Pal and Director, IVRI, from the evidence produced by the worker and others it is clear that the worker has not worked continuously and has not worked from 10-9-87 to 24-2-90

and from 29-5-90 to February, 1991. The worker's sole testimony is not reliable. It is also note worthy that from the joint inspection report of Muster Roll/Wage bills i.e. paper No. 11/2, the worker, Vijay Pal has worked for 64 in days in 1989, 80-days in 1990, 141 days in 1991 and 13 days up to 21-2-92 in 1992. It cannot be said that the worker was disengaged on 24-8-91 instead he was disengaged on 22-2-92. These are the cases of casual labour intermittently engaged and no appointment order has been issued, therefore, the worker is not entitled to any notice, notice pay, compensation before his disengagement and the action of the management is justified and legal.. Issue is, therefore, decided against the worker and in favour of the management and the worker is not entitled to any relief.

In ID No. 77/2000 between Mahendra Pal and Director, IVRI in the said case, the worker has stated that he worked from 18-2-93 to 16-2-95 continuously. Though the worker is not a regular employee but a daily rated employee. The worker has filed two certificates in support of his case and both of these documents have been admitted by the representative of the opposite party, which shows that the worker worked for 176 days in 1993, but according to joint inspection report of Muster Roll/Wage Bills the worker is shown to have worked for 40 days in 1993, 49 in days in 1994 and 40 days in 1995, therefore, it cannot be said that the worker's disengagement after 17-2-95 suffers from any illegality. Issue is, therefore, answered against the worker and in favour of the management and the worker is not entitled to any relief.

In ID case No. 82/2000 between Sewa Ram and Director, IVRI, according to the worker he was engaged as regular worker at the rate of Rs. 21.65 per day but there is not appointment letter to this effect. The worker in his statement of claim at para 9 has not disclosed the date on which he was terminated. This Court has to adjudicate as to whether the action of IVRI in terminating the services w.e.f. 17-2-95 is legal and justified? The worker himself has admitted in the cross-examination that he worked till 14-12-95, therefore, is not question of his termination on 17-2-95. The worker's evidence is not reliable one as according to the certificate filed by him he was initially engaged as casual labour. It is also made out from order of the Central Administrative Tribunal, passed on original application No. 580/94, Sewa Ram and others and Union of India & others, the photo stat copy of which has been filed by the worker himself that on 15-4-94 Hon'ble Central Administrative Tribunal passed the order asking the opposite party for filing counter affidavit within a week and in the meanwhile the worker shall be allowed to work. The witness of the opposite party has also stated that the worker filed his regularization case along with other before Central Administrative Tribunal, Allahabad and by a common judgment dated 15-12-94 and 16-12-94 dismissed the applications and some of the workers had also moved Special Leave Petition before Hon'ble Supreme Court of

India and the same has also been dismissed on 7-8-95. The witness also stated that according to photostat copy of registration card of casual labour the worker has not completed 240 days of continuous service in the institute.

The worker has failed to file employment certificates in respect of his engagement till 15-4-94. From the bare persual of the casual labour card Ext. M-1, it is shown that the worker has worked up to 11-5-94 and it is clear that the worker has not completed 240 days before his disengagement on 11-5-94. However, worker's engagement under the interim orders of the Central Administrative Tribunal does not confer any right for his engagement under the interim orders of the Court. The worker is not entitled to any notice, notice pay or compensation for his disengagement. The action of the management is, therefore, justified and the worker is not entitled to any relief. Award passed accordingly.

In ID case No. 162/2000 between Tota Ram and Director, IVRI, it is made out from the evidence on record that Sh. Tota Ram tried his luck first by filing original application in the Central Administrative Tribunal No. 1810/92 against the employer seeking the relief for regularization and the same stood dismissed, then Tota Ram tried his luck by filing the present case.

The worker has alleged that he was initially appointed as regular labour on 20-6-90 but, he was not allowed to work on 2-11-94. The worker has filed the certificates in respect of his engagement but baring one certificate dated 5-10-90, no other certificate has been admitted by the opposite party. From the certificate admitted by the opposite party it is apparent that according to the worker himself he has worked 99 days from 25-6-90 to 5-10-90. The opposite party has filed registration card for casual labour Ext. M-1. The worker has admitted in his cross-examination its truthfulness. The casual labour card shows that the worker has worked for 99 days in 1990, 198 days in 1991 and only 89 days in 1992. It is not shown that he worked after 13-7-92. It is also made out from the card that he was not a regular or permanent employee of IVRI but, was engaged for intermittent work up to 13-7-92. However, the Muster Roll/Wage Bills tell different story as it shows that the worker has worked for 5 days in 1990, 168 days in 1991, 63 days in 1992 and 21 days in 1994 and has worked up to 31-5-94. In the instant situation it is clear that worker was not disengaged on 2-11-94 as stated by the worker. Since the worker was only casual labour so the management's action in disengaging the worker after 31-5-94 cannot be called in question, as the worker did not complete required 240 days work before his disengagement. The issue is therefore answered against the worker and the worker is not entitled to any relief.

In ID case No. 163/2000 between Ram Pal and Director, IVRI, according to the worker he was engaged as regular worker at the daily wage of Rs. 9.50 per day on 12-11-84 which was subsequently raised to Rs. 17.35 per

day and suddenly he was not to work on 1-7-90 without any rhyme or reason, notice or salary in lieu thereof. The worker has filed as many as photostat copies of seven certificates. Last certificate is dated 30-6-90. In none of the certificates working days have been mentioned. The certificates itself shows that the worker was not in employment from 18-12-89 to 31-3-90. Similarly the certificate shows that the same has been issued for the intermittent work. In absence of any appointment letter it cannot be said that the worker has appointed for regular work. It is evident from the joint inspection of the Muster Roll/Wage Bills that is paper No. 11/2 that the worker did work up to 17-9-91 therefore, it cannot be said that the worker was terminated on 30-6-90 itself. The worker is casual labour and whenever the exigencies demand they are engaged and when the exigencies are over they are disengaged. From the Muster Roll/Wage Bill statement it is clear that the worker did not work 240 days in any calendar year. Moreover, he worked till 17-9-91 and prior to 17-9-91 he has barely worked for 200 days. The worker was therefore not entitled to any notice before his disengagement and the management's action cannot be termed as illegal. The issue is therefore answered against the worker and the worker is not entitled to any relief.

In ID case No. 164/2000 between Harprasad and Director, IVRI, the worker has alleged that he was appointed as regular worker on 1-3-87 at the rate of Rs. 10.50 per day which was subsequently increased to Rs. 12.50 per day and suddenly not allowed to work from 26-5-89 without any rhyme or reason. No appointment letter has been filed that he was appointed as regular worker. According to reference order this Court has to adjudicate whether the termination of the worker on 29-11-87 was legal and justified whereas the worker himself does not say that he was terminated on 29-11-87 instead he says that he was terminated on 26-5-89. The representative of the worker on 12-12-2002 moved an application seeking adjournment on the plea that reference order wrongfully mentions 29-11-87 as date of termination it should be 26-5-89. He prefers to get the reference order amended by the Ministry. In view of his request the case was adjourned and 17-2-2003 was fixed for amended reference order. But no amendment in the reference order is said to have been received by this Court. The Court cannot travel beyond the scope of the reference order. The case has been espoused after the long delay and no explanation has been given by the worker therefore it cannot be said that there exists any dispute as on the date of reference order. Even it is taken to be true that the worker was terminated on 26-5-89 there is a delay of more than 10 years. It is evident from the certificate filed by the worker that he was not regular instead he was engaged as casual labour. In absence of any appointment letter the worker cannot be treated as regular worker as he has tried to state in his statement of claim. It is also noteworthy that in none of the certificate the actual working days have

been mentioned. The worker has not worked from 5-6-87 to 15-9-87. He has also not worked from 29-11-87 to 14-7-88. Similarly he has not worked from 26-11-88 to 11-2-89. This shows that the worker has worked intermittently as and when required. From the joint inspection report of the Muster Roll/Wage Bills it is clear that the worker has not completed 240 days work before his disengagement even on 26-5-89. In the circumstances there is no illegality in disengagement of the worker. Issue is therefore accordingly decided againsts the worker and he is not entitled to any relief.

In ID case No. 87/2000 between Sunil Kumar and Director, IVRI, the worker has allegaed that he worked from 11-6-88 to 26-2-91. It is evident from the documents filed by the worker that he was a casual mazdoor. The worker has filed certificates to show his engagement but number of days have not been mentioned as to how many days he has worked; On the other hand joint inspection report of Muster Roll/Wage Bills reveals that he worked last with IVRI up to 31-5-94. From the bare parusal of Annexure-5, submitted by the worker, it is shown that he worked from 14-2-91 to 26-2-91, as such, there is not disengagement on 12-2-91. The worker has failed to prove that he has been disengaged although he has not worked for 240 days in the preceding 12 months. The issue is therefore decided against the worker and he is not entitled to any relief.

In ID case No. 188/2000 between Puttam Khan and Director IVRI, the reference is to adjudicate whether or not the termination of the worker w.e.f. 24-7-84 is legal and justified? There is delay of about 16 years. There is no explanation about delay in the statement of claim. The contention of the wroker is that he made application for appointment for regular vacancy, twice but he was not selected. This is no ground for condoning the delay of 16 years. There appears to be no dispute of termination of daily wager on the date of reference order. However, it is noteworthy from the perusal of the joint inspection report of Muster Roll/Wage Bills that the worker was engaged from 1-1-91 to 31-9-91 and hence the worker is not entitled to any relief. Claim is bared by delay and latches on the part of the worker. Issue is accordingly decided against the worker and he is not entitled to any relief.

In ID case No. 189/2000 between Deen Dayal and Director IVRI, the worker has alleged that he was engaged by the opposite party from 1-6-89 to 6-2-93 and he has filed the certificate of engagement along with statement of claim. Reference is to adjudicate the termination of worker as on 7-2-93 but joint inspection report of Muster Roll/Wage Bills reveal that the worker was engaged 54 days in 1994 and 63 days in 1995. In the circumstancce there is no termination on 7-2-93 as alleged. Issue is therefore, answered against the worker and he is not entitled to any relief.

In ID case No. 192/2000 between Siya Ram and Director IVRI, the worker has alleged that he was appointed as regular labour on 16-8-94 on daily wage basis and was

not allowed to function on 7-1-92 without any rhyme or reason. The certificates filed by him goes to show that he was not a regular worker but a casual labour on daily wage basis. None of the certificate show the number of days he has worked as casual mazdoor. It was the duty on the part of the worker to prove that he has worked for 240 days before his disengagement. From the perusal of above certificate it is clear that he was not employed continuously. On the orders of the Court the joint inspection of Muster Roll/Wage Bills was carried out and it reveal that the worker never completed 240 days in any of the calendar year. Therefore no duty is cast upon the employer to give notice, notice pay or compensation befoer his disengagement. The worker is therefore, not entitled to any relief.

In ID case No. 193/2000 between Balak Ram and Director IVRI, the worker has alleged that he was appointed on 19-8-75 and worked up to 8-7-85. There is delay of about 15 years and the said delay has not been satisfactorily explained. The worker has filed the photostat copy of the certificates. The last certificate shows that the worker has worked from 2-1-85 to 31-3-85 and from 13-4-85 to 8-7-85. There is no certificate to the effect that the wroker ever worked from 1982 to 1984. The last certificate also does not show that worker worked for 240 days prior to his termination on 9-7-85, therefore, the action of the management in disengaging the casual labour is not illegal and unjustified. Issue is therefore, decided accordingly against the worker and he is not entitled to any relief.

In ID case No. 195/2000 between Babu Ram and Director IVRI, the worker has alleged that he has worked as causal labour from 16-8-93 to May, 1994 thereafter he was terminated on 1-6-94. The worker has not stated specifically as to up to which date he actually worked. The burden was on the worker to prove that he did work for 240 days prior to 1-6-94 but the worker has failed to establish it. The employer has filed the photostat copy of the casual labour registration card that is Ext. M-1 which shows that the worker has worked for 16 days in March, 1994, 28 days in April, 1994 and 31 days in May, 1994. If the ceritificate filed by the worker and causal labour card is taken into consideration for calculating the number of days the total number of days comes out be 147 days alone. This position disentitled the worker to receive any notice, notice pay or compensation and the action of the management in disengaging the worker from 1-6-94 is not illegal or unjustified. The issue therefore, is decided against the worker and he is not entitled any relief.

In ID case No. 199/2000 between Sanjay Tiwari and Director IVRI, the worker has alleged that he was engaged as casual labour w.e.f. 15-11-88 to 10-4-95. The worker has filed the certificates which do not show that the worker worked in the year 1992, 1993 or 1995. Certificates, paper No. A-2/6 is the certificate of 20-1-92 in which the worker is shown to have worked from 17-9-91 to 26-10-91. This is a photo copy

and there is glaring mischief on the said document which shows the work of 1994. The certificate of 1992 cannot show the working days of year 1994 and this is clear by the joint inspection report paper No. 9/2 that the worker has worked for 74 days in 1990 and 101 days in 1989 and 44 days in 1988. The paper No. 9/2 is more authentic than the one, the photo state copy of which produced by the worker. I therefore come to the conclusion that the worker was not in employment during 1993, 1994, 1995 and therefore no question arise of termination on 11-4-95. Issue is therfore answered against the worker and the worker is not entitled to any relief.

In ID case No. 200/2000 between Ramesh Chandra and Director IVRI, the point to be adjudicated it as to whether the action of the management in terminating the seriveces of Shri Ramesh Chandra w.e.f. 6-9-89 is legal.

Apparently there is delay of about 11 years in filing the statement of claim after reference order on 10-10-2000. No satisfactory explanation came forward why he kept mum for such a long period. In the circumstance, I came to the conclusion that there was no dispute as on the date of reference order.

The worker has filed certificates, which show that he was casual mazdoor. Had the worker been in need of ernployment he should have come to the Court within the reasonable time along with his case.

There is joint inspection report of Muster Roll/Wage Bills of the worker which show that the worker has worked for 132 days in year 1989 and 145 days in year 1988, 93 days in 1987, 56 days in 1986 and 58 days in 1985. From bare perusal of the chart, it is proved that the worker has not completed 240 working days before his termination on 6-9-89. Employer is therefore not obliged to give notice, notice pay or compensation to the worker and the action of the management in disengaging him on 6-9-89 is not illegal or unjustified. The worker is therefore not entitled to any relief.

In ID case No. 204/2000 between Ram Swaroop and Director IVRI, the worker has alleged that he was engaged on 7-10-84 as a regular labour on daily wage basis and disengaged on 1-7-90. The certificates filed by the worker go to show that number of days have not been mentioned in any of the certificates. Originals of certificates have not been produced. Only certificate is admitted to the opposite party i.e. annexure-1 of file. On the other hand management has filed registration card of casual worker. According to the chart prepared on the basis of Muster Roll/Wage Bills it is clear that the worker has not completed 240 days in any of the calendar year and has worked barely for less than 200 days prior to his termination. The worker is therefore not entitled to any notice, notice pay or compensation and the action of the management in disengaging his serivces is not unjust or illegal. The issue is therefore, answered against worker and in favour of the management and the worker is not entitled to any relief.

In ID case No. 66/2000 between Sh. Mohar Singh and Director IVRI, the worker has alleged that he was engaged as regular worker on 11-8-87 by the opposite party on monthly salary basis to be calculated on daily wage basis although no written appointment order was given to him. It is admitted in the statement of claim itself that there was interruption in service, which he alleges to be artificial and has alleged to work until prior to 1-1-91. The worker has filed certificates which do not show that he was regular employee. According to the certificates of the worker himself he worked up to 6-1-92 and there is a clear mention that after work was over the sanction of engagement came to an end. Each certificate finds note, which goes to reveal that the worker was engaged against the valid sanction of the project. According to the joint inspection report on the basis of Muster Roll/Wage Bills also it is made out that the worker worked beyond 1-1-91 up to 30-6-92. Therefore, the allegation of the worker that suddenly the worker was not allowed to function on 1-1-91 without any rhyme or reason notice, notice pay or compensation is false. It is therefore, incorrect to say that the worker was disengaged on 1-1-91 by the management. The issue therefore, is accordingly answered against worker and in favour of the management. I also come to the conclusion that the worker is not entitled to any relief.

In ID case No. 72/2000 between Shri Krishan Kumar and Director IVRI, the worker has alleged that he was appointed as regular labour on 1-11-90 on daily wage basis and suddenly the workman was not allowed to function on 17-2-95. Statement of claim is dated 27-9-2000. He did not mentioned that earlier he filed OA No. 506/1994 along with Daya Ram & others before the Central Administrative Tribunal for regularization, which was dismissed and the and the ad interim stay vacated. In rejoinder the worker has admitted that he filed the OA in Central Administrative Tribunal when the opposite party brought out the fact in written statement. The opposite party alleged that the Special Leave Petition was filed in the Supreme Court and the same too was dismissed. Worker's case is that the worker was not regularized and when he was terminated from the service he was aggrieved and filed the present claim. The worker did not file the copy of the judgment.

From the perusal of the certificate filed by the worker it is proved that he was a casual mazdoor and his servivces are each times came to an end as soon as the work for which he was engaged was over and sanction expired. There is regular interruptions as follows:

- 27-12-90 to 20-3-91
- 22-5-91 to 2-9-91
- 1-10-91 to 22-11-91
- 8-2-92 to 2-5-92
- 1-6-92 to 12-11-92
- 3-2-93 to 8-5-93
- 30-7-93 to 5-10-93

Besides there are short interruption also. Worker has not filed any certificate to show that he was employed on 1-11-93 and onward. From the joint inspection report prepared on the basis of muster roll it is evident that the worker has worked only 58 days in 1994 and 41 days in 1995. There is no appointment letter to prove that he was appointed as regular labour. From the evidence on the record it is proved that he was a casual labour engaged intermittently and did not complete 240 days work before his termination. As such there is no violation of section 25F. Since there is no seniority list of casual labours maintained therefore, is not illegal or unjustified. The issue is therefore, decided against the worker in favour of the management and worker is not entitled to any relief.

In ID case No. 80/2000 between Chetram and Director IVRI worker Chetram has also stated almost the so similar facts as Krishna Kumar whose case is discussed above Chetram too states that he was terminated on 17-02-1995 but he states that he was appointed on 12-08-1993. He too is a casual Mazdoor and not a regular one. In para 3 he has stated that he was appointed on 12-08-1993 but & filed the photocopy of the certificate to show that he worked prior to the date appointment also. According to the statement paper no. 11/2 prepared by the Management, Chetram too has worked only for 57 days in 1994 & 40 days in 1995. Termination of the worker also do not affect the provisions of sections 25 B (2) & 25 F of the Act, therefore the Management's action of disengaging Shri Chetram is not illegal and unjustified. It is also noteworthy that Shri Chetram also filed the OA No. 506/94 before the Central Administrative Tribunal and that too was dismissed. On the discussions above, I came to the conclusion that Shri Chetram too is not entitled to any relief.

In ID case No. 185/2000 between Jawahar Lal and Director IVRI, the worker has alleged that he worked as Casual Labour/Daily waged worker from 01-11-88 to 18-10-1994. He has filed the Photo copy of the certificate's with holding original one First certificate shows that he was engaged for 01-03-1990 to 31-05-1990 with a break of 40 days. The second certificate shows similar engagement from 11-06-1989 to 11-9-89, third shows from 01-11-1988 to 28-01-1989 fourth shows from 20-10-1990 to 20-1-91 fifth shows 19-10-1991 to 19-01-1992 sixth shows from 16-04-1992 to 13-07-1992.

Report prepared after the Joint inspection of the Muster Roll/Wage Bills shows that the worker has worked as follows:—

Sl. No.	Year	Days worked
1.	1988	59
2.	1989	55
3.	1990	71
4.	1991	72
5.	1992	81
6.	1993	60
7.	1994	26

Worker last worked on 31-05-1994 and did not complete the 240 days work before his disengagement on 31-05-1994. The disengagement therefore is not illegal and unjustified and the worker is not entitled to any relief.

In ID case No. 194/2000 between Shri Om Pal and Director IVRI has also alleged that he was appointed as regular Labour on 12-08-1991 & suddenly he was not allowed to work on 13-10-1993, accordingly this Court has to adjudicate in the light of reference whether or not the Management's action in terminating the services of the worker on 13-10-1993 is justified & legal.

There is no appointment letter nor the termination letter in the case. Worker has filed photocopy of 2 certificates i.e. Annexure No. 1&2. In both the certificates worker is shown to have worked as casual Mazdoor. Certificate is not admitted to the Opposite Party. The originals of the certificate has been withheld by the worker. The second certificate however shows that he worked only 41 days in 1993. Worker has also not filed any certificate to show that he has worked in 1992. Report prepared on the basis of Muster Rolls/Wage Bills shows that worker was engaged for 77 days in 1991 and 13 days in 1993.

Worker's representative has admitted that he has no proof to support that the worker actually worked for 240 days. There is no unfair practice on the part of employer. On considering the evidence on the record I come to the conclusion that the worker is not a regularly appointed worker. He was merely a casual mazdoor. His disengagement is not illegal or unjustified. Issue is answered accordingly. The worker is not entitled to any relief.

In ID case No. 196/2000 between Sh. Ram Awtar and Director IVRI, the worker has stated that he worked with the opposite party as daily wager worker/casual labour w.e.f. 1-4-87 and worked till 21-12-87 for about 8 months only. In the light of the reference order it has to be adjudicated whether the action of management in terminating the service of Sh. Ram Awtar is legal and justified? The worker has filed the photocopy of the certificate dated 22-12-87, which shows that the worker has worked as casual mazdoor as per details below:—

Sl. No.	Duration	No. of Days
1.	10-4-87 to 19-10-87	Not mentioned
2.	22-10-87 to 30-10-87	Not mentioned
3.	3-12-87 to 21-12-87	Not mentioned

On the contrary the registration card for casual labour Ext. M-1 shows that the worker has worked only for 99 days the details are as below:

Sl. No.	Duration	No. of Days
1.	19-9-87 to 19-10-87	
2.	22-10-87 to 30-11-87	
3.	3-12-87 to 21-12-87	99 days

In case the original certificate would have been filed by the worker entry at Sl. No. 1 of the certificate could have been ascertained. Photo and signature on the Ext. M-1 has been admitted by the worker. The worker was merely a casual mazdoor and not a regularly appointed worker. His case does not fall in the category of Section 25 F and 25G. Action of the management is not illegal or unjustified. Moreover the claim of the worker is stale and there is abnormal delay of over 12 years. Issue is, therefore, decided against the workman and in favour of the management. The worker is not entitled to any relief.

In ID case No. 206/2000 between Sh. Harswaroop and Director, IVRI, the worker has alleged that he was appointed as regular labour on 22-11-87, but no appointment letter to the effect has been filed by the either party. The worker has admitted that he was daily wage earner. Suddenly the workman was not allowed to function on 7-1-92. It is alleged that the management has manipulated the records and has made artificial breaks. Worker has to prove his allegations.

The workman has himself filed the photocopy of the certificates, which shows that the worker was only casual mazdoor. It falsifies the case of worker that he was appointed as a regular worker. The certificates show that he was engaged for particular task and valid sanction. When the task and section was over he was not engaged. This shows that the worker was engaged against specific task.

On scrutiny of the photocopy of certificates, it is found that the certificates have been regularly issued i.e. when the work and sanction expired the worker was issued the certificate showing the duration of work. First certificate was issued on 7-4-88, the second on 26-5-89, third on 17-12-89, 30-6-90, 16-1-91. The opposite party has filed the registration card for casual labours i.e. Ext. M-1, which shows the engagement of worker till 6-1-92. The report prepared on the basis of Muster Roll/Wage Bills has also been produced which also show that the worker last worked on 6-1-92. The worker worked only 6 days in 92 and 83 days in 91.

The worker has admitted in his cross-examination that he was not engaged beyond 6-1-92. The worker never completed 240 days work in a calendar year or worked 240 days in 12 months preceding the date of his termination. The action of the management in not engaging worker after 6-1-92 is neither illegal nor unjustified. Issue is accordingly answered against the worker. The mal practice on the part of management is not established. The worker is not entitled to any relief.

In ID case No. 5/2001 between Sh. Pyare Lal and Director, IVRI, the worker stated stereotype that he was regularly appointed labour for indefinite period and continuous service without interruption w.e.f. 13-9-90 to 7-1-92 on 7-12-92 suddenly the worker was allowed to function. This court has to adjudicate whether or not action

of management in terminating the services on 7-1-92 is legal and justified.

It is note worthy that no appointment letter is filed in court in support of the case that he was regularly appointed labour, on the other hand this is admitted that he was earning daily wages. Certificate also goes to show that he was given certificates regularly showing him as casual mazdoor on daily wage basis. The worker has withheld the original certificates. Not only that the employer issued certificates but also maintained registration card of casual labor. In this case also it was mentioned, the photo state copy of which is on record. He was intermittently engaged as and when his services were required. It is false to allege that he was regular employed worker for continuous work. According to the report prepared on the basis of the Muster Roll/Wage Bills the worker was not laid off on 6-1-92, but also worked from 8-2-93 to 28-2-93, 3-5-93 to 12-5-93, 24-8-93 to 27-8-93, 31-5-94 to 19-5-94 and 31-5-94. According to report on file paper No. 11/2 the worker worked less than 40 days before he was finally disengaged on 31-5-94. Worker's case in the circumstances not covered under the Section 25 F. The issue is accordingly answered against the workman and in favour of the management.

In ID case No. 184/2000 between Rajesh Kumar and Director, IVRI, the worker has alleged that he has served the opposite party w.e.f. 7-11-84 to 22-12-91. Engagement was for continuous work for 3 months and later on disengaged and engaged other worker and called worker (present worker) after 3 months. No appointment letter has been filed that the worker was engaged for continuous work. The worker has filed photo stat copies of his certificates, which go to show that the worker worked w.e.f. 7-11-84 to 3-2-85, 6-2-85 to 8-3-85, 15-1-87 to 23-2-87 for 40 days, 26-2-87 to 15-3-87 for 20 days, 9-11-91 to 22-12-91 for 44 days, 21-10-87 to 23-11-87 (working days not mentioned), 11-11-88 to 28-5-89 for 199 days, 30-7-85 to 24-11-85 (116 days), 11-3-88 to 17-4-88 (days not mentioned), 12-10-90 to 25-12-90 for 45 days.

It goes to show that the worker was intermittently engaged as casual labour. No certificate has been produced by the worker that he did work whole of 12 calendar months in 1986. As the worker is not a continuous one he has to prove that prior to 22-12-91 in preceding 12 months he worked for 240 days. According to Muster Roll/Wage Bills the worker has worked only for 44 days in 1990 and 41 days in 1991, which is short of 240 days. The management's action, therefore, cannot be termed as illegal/unjustified. Issue referred to this court is whether the worker's termination on 23-11-90 is legal or not where as the worker was not terminated on 23-11-90 as the worker was in employment on 23-11-90 as per the photocopy of certificate paper No. 2/12. Issue is accordingly answered against the worker. The worker is not entitled to any relief.

In ID case No. 69/2000 between Bhim Sen and Director, IVRI, the worker's claim is that he was appointed

as regular worker on 1-12-88 and worked till 16-2-95 and suddenly on 17-2-95 he was not allowed to work, the management, however, manipulated the record and has made artificial break in the service, although the worker continue in the service all through.

No appointment letter filed to show that he was regular employee of the IVRI. On the other hand the worker has himself filed photo stat copies of certificates of engagement dated 13-3-89, 9-10-89, 15-5-90, 13-5-91, 23-8-91, which show that the worker was not at all regular labour, but a casual mazdoor who was engaged intermittently. The Opposite party has filed registration card for casual labour Ext. M-1, which is admitted by the worker in the cross-examination. However, the management has filed the report prepared on the basis of Muster Roll and Wage Bills i.e. paper No. 10/2. Chart shows that the worker worked 40 days in 95 and 44 days in 1994. The burden was on the worker to prove that he worked 240 days in preceding 12 months immediately before 17-2-95. The worker has failed to prove the said fact. In the circumstances worker is not entitled to protection under Industrial Disputes Act, 1947. The action of the management in not engaging the worker after 17-2-95 is not illegal or unjustified. The worker is, therefore, not entitled to any relief. Issue answered accordingly.

In ID case No. 190/2000 between Mool Chand and Director, IVRI, the worker has alleged that he was engaged w.e.f. 1-7-92 to 10-5-94 as daily wager/casual worker. The worker's case is that the opposite party engaged the worker for continuous work for 3 months and later on disengaged and he engaged another worker again after 3 months the worker was engaged. So that the worker may not be entitled to regular appointment.

There is no appointment letter to show that the worker was engaged for continuous work.

The worker himself has prepared a statement and filed the same i. e. A2 without any signature which shows that the worker worked for 92 days in 92, 93 days in 1994 and 89 days in 1995.

As per report prepared on the basis of Muster Roll/Wage Bills worker is shown to have worked for 87 days in 1992, 34 days in 1993, 36 days in 1994 and 41 days in 1995.

According to the worker's own evidence he cannot be believed that he continuously worked right from his appointment. Documentary evidence not show that the worker has not continuously worked for 240 days in 12 months immediately preceding the date of alleged termination i. e. 11-5-94 or 16-2-95. Action of the management in disengaging the worker on 11-5-94 or 16-2-95 is not illegal or unjustified. Issue is accordingly answered and the worker is not entitled to any relief.

In ID case No. 186/2000 between Sh. Omkar and Director, IVRI, the worker has alleged that he worked as daily wage casual labour w.e.f. 27-1-86 to 15-5-90. According to the reference order, this court has to adjudicate as to

whether the termination of the services of the worker w.e.f. 16-5-90 is legal and justified.

The worker has filed photocopies of the certificates dated 31-5-86, 30-9-88, 26-5-89, 15-9-87, 28-3-87, 15-5-90. No explanation has come forward from the worker as to why the originals have been with held by him. The representative of the opposite party has admitted only 2 certificates i. e. 30-9-88 and 15-9-87 rest have not been admitted. The two certificates admitted by the opposite party shows that the worker has worked during 12-3-88 to 21-8-88, 24-8-88 to 30-9-88, 9-7-87 to 16-7-87 to 00.87 to 26-8-87, 28-8-87 to 15-9-87 but working days are not disclosed as to how many days worker actually worked. Management has filed report prepared as per Muster Roll/Wage Bills shows that worker worked 129 days in 1986, 153 days in 1987, 56 days in 1988, 73 days in 1989 and 38 days in 1990. The worker has not completed 240 days work immediately preceding date of alleged termination dated 16-5-90 and therefore, the worker is not entitled to any protection of law as provided in Industrial Disputes Act and management's action is just and legal. The worker is not entitled to any relief. Issue answered accordingly.

Lucknow.

8-6-2007

SHRIKANT SHUKLA, Presiding Officer
नई दिल्ली, 20 जून, 2007

का.आ. 1989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 90/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-6-2007 को प्राप्त हुआ था।

[सं. एल-12012/15/1999-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 20th June, 2007

S.O. 1989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Maharashtra and their workman which was received by the Central Government on 19-6-2007.

[No. L-12012/15/1999-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT:

Shri A. N. Yadav, Presiding Officer

Case No. 90/2002

Date : 12-06-2007

Shri Rajendra B. Astankar :Petitioner

Vs.

Bank of Maharashtra :Respondent

AWARD

The Central Government, Ministry of Labour, New Delhi after satisfying the about the existence of disputes between the petitioner and respondent exercise its power under sub-section (1)and sub-section 2(a) of Section 10 of the Industrial Disputes Act has referred this dispute for adjudication vide order No. L-12012/15/99-IR(B-II) dt. 11-05-99 with following schedule.

(2) "Whether the action of the management of the Bank of Maharashtra, Chandrapur Regional Office, Chandrapur in terminating Shri Rajendra S/o Bapuraoji Ashtankar, Ex-Part-time Sepoy/Peon, Bank of Maharashtra Br. Bhisi, Dist-Chandrapur, is legal, proper, or justified? If not, what relief, the workman is entitled and from which date? What other directions are necessary in the matter?"

3. The workman for ventilating his grievances approached to this Tribunal with the contention that he was appointed by the Bank of Maharashtra w.e.f. 23-06-1997 and was paid a wages at rate of Rs. 25/- per day in a subordinate cadre. According to him he worked at Bhisi Branch in Chandrapur district in the same vacancy for a period of 226 days continuously. Later on his services were terminated abruptly and illegally without notice w.e.f. 23-05-1998. Thus he has put more than 240 days continuous service excluding the Sunday and holidays at the time of termination. The provisions of Section 25-B, 25-F of I.D. Act though attracted are not followed; no retrenchment notice or compensation in lieu of notice was paid. According to him the termination amounts to the retrenchment. His services were utilized on a permanent vacant post as the permanent workman; full time sub staff was transferred. He was selected after interview by the Branch Manager. However, his name was not shown in the Muster Roll and thus amounts to unfair labour practice and the termination is illegal. He has prayed that his termination order dated 23-05-1998 should be set aside and directs the Bank of reinstate him with the full back wages. the Bank also be directed to pay the minimum wages as per bi-partite settlement along with the bonus for the said period.

(4) The management resisted the claim by filing its Written Statement. The Bank has denied that he was appointed in the Bank was engaged continuously for a period of 266 days. According to it as he was never appointed therefore the question of his termination, retrenchment and consequently following the provisions of Section 25-B and 25-F does not arise. There is no question of notice pay or retrenchment compensation.

He was not engaged, however the payments were made to him for the temporary work performed by him i.e. cleaning and sweeping premises. Thus according to it there was no unfair practices what so ever and he was not at all entitle for the benefits as claimed by him. He was never issued any order appointing him on any permanent post. Finally it has prayed to answer the reference in negative.

(5) The petitioner/workman has filed his own affidavit. However the management did not cross examine him and adduced any oral evidence. It has filed the necessary documents i.e. the vouchers on which the payment was made.

(6) I have heard Mr. Sahasrabudhe for the petitioner and the representative of the Bank. I have gone through the record. The following points arise for my consideration on the basis of the submissions made by them.

(a) Whether the petitioner was appointed on a permanent post and he acquired permanency.

(b) Whether he is entitled for reinstatement with full back wages as prayed by him.

(7) Mr. Sahasrabudhe on behalf of the petitioner has submitted that he has completed more than 266 days continuously within one calendar year. He had acquired permanency and before termination it was necessary to follow the provisions of Section 25-B and 25-F of I. D. Act. According to him as per Sastri Award and bi-partite settlement, there is no post or a phrase as Badli or substitute employee is a classification amongst the employee of the Bank of Maharashtra is concerned under the Sastri Award and therefore his status will have to be treated as temporary employee. He was appointed in a vacant post of one permanent employee as he was transferred. Therefore his appointment was in a permanent post entitling him for absorption as a permanent employee as he worked continuously for 240 days. Thus according to him he is entitled for the regularization as well as reinstatement.

(8) On behalf of the Bank the representative opposed the argument and submitted that the Bank is entitled to appoint person on a temporary basis as per Sastri Awards as well as under the Bi-partite settlement. He has pointed out the definition of a temporary workman and that the petitioner was engaged temporary as and when needed for filling the temporary vacancy of PTS. According to him he was engaged as a Part-time Sepoy as the permanent Sepoy was transferred. According to him it was as per procedure of the Bank and he is not entitled for any retrenchment benefit as well as further permanency. It is also submitted that the petitioner is over qualified for the post of part time Sepoy.

(9) The perusal of the record and the rules indicates that the petitioner was engaged as Part-time Sepoy. He

was neither sponsored by the Employment Exchange nor engaged following the recruitment procedure. The Branch Manager had appointed him. Undisputedly the Branch Manager was not at all the appointing authority having powers to appoint employee. The petitioner had worked on a daily wages when ever the work was available and there was a need of temporary employee. He was paid on the vouchers at the rate of Rs. 25/- per day. The management has produced the Xerox copies of the vouchers under which the wages were paid. Those vouchers do not disclose the continuity of the services, Admittedly no appointment order was given to the petitioner. Therefore his engagement will have to be treated as temporary employee appointed by the Bank with in its power for the additional works or necessary for the increased work. His appointment can not be treated for filling the post of the permanent vacancy. Mr. Sahasrabudhe pointed out the extract of term No. 20.7 & 20.8 to support his contention that the temporary workman shall not be continued for more than three months and if he works for continuous period aggregating for 240 days will be confirm in permanent post irrespective of his qualification.

(10) However the above submissions of Mr. Sahasrabudhe can not be accepted because a temporary workman can also be appointed to fill the permanent vacancy provided that the appointment shall not exceed the period of 3 months and the Bank shall make the arrangement for filling up the vacancy. No doubt the obligation is cast on the Bank to fill the permanent vacancy within period of 3 months but the failure of the Bank will not entitle to treat the temporary workman as a confirmed workman. The close scrutiny of the above rules 20.7 & 20.8 will disclose that they are in respect of temporary employee eventually selected while filling the vacancy of permanent employee obviously after following the recruitment process. These rules describe how the period of a temporary employment shall be treated after the selection of such temporary employee while filling the post of permanent employee. It does not permit direct entry without selection as per recruitment rules to the post of permanent employee nor it entitles for absorption on permanent post. Undisputedly the petitioner was never selected as per recruitment rules. Therefore he can not be benefited under this rule as argued and submitted by Mr. Sahasrabudhe. In such circumstances the question of actual working days will be immaterial. It is obligatory to go through the recruitment process. Similarly the principles laid down in a reported case of Umadevi, are clear enough to prohibit such back door entry. In my opinion the petitioner is not entitled for any relief as claimed by him.

(11) Thus in my opinion the petitioner can not claim either permanency or any retrenchment compensation as prayed. He was simply working on a daily wages when

the work was available and for which he has been paid on voucher. The question of observing the provision of Section 25-B and 25-F will not arise. Similarly the submissions of the management regarding the over qualification of employee has not consequence and I do not think to make comment on it. Suffice it say that the petitioner failed in proving the entitlement and the reference will have to be answered in negative. Accordingly I pass the award that the petitioner is not entitled for any relief. Hence this award.

A.N. YADAV, Presiding Officer

नई दिल्ली, 20 जून, 2007

का.आ. 1990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या 7(सी)/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-06-2007 को प्राप्त हुआ था।

[सं. एल-12011/12/2005-आई.आर.(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 20th June, 2007

S.O. 1990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7(C)/2005) of the Industrial Tribunal Patna (Bihar) as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank, and their workman which was received by the Central Government on 19-06-2007.

[No. L-12011/12/2005-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, SHRAM BHAWAN,
BAILEY ROAD,
PATNA**

(Reference Case No. 7(C) of 2005)

BETWEEN

The Management of Punjab National Bank,
Zonal Office,
Chanakya Place, R-Block,
Patna

And

Their workman Shri Bhola Mali.

For the Management : Shri R.K.S. Bisen,
Manager,
Bank Representative.

For the Workman

: Shri J.D. Mishra,
Dy. General Secretary,
Punjab National Bank
Employee's Union, Bihar,
C/o. Punjab National Bank
Boring Road,
Patna.

PRESENT

Vasudeo Ram, Presiding Officer
Industrial Tribunal, Patna.

AWARD

Patna, dated the 14th June, 2007

By adjudication order No. L-12011/12/2005-IR(B-II) dated the 13th July, 2005, the Govt. of India, Ministry of Labour, New Delhi has referred under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be called 'the Act' for brevity) the dispute between the management of Punjab National Bank, Zonal Office Chanakya Place, R, Block, Patna and their workman Shri Bhola Mali to this Tribunal for adjudication on the following :

"Whether the action of the management of Punjab National Bank, the Zonal Manager, Patna in not promoting Shri Bhola Mali to higher Scale wage to PTS and also denying him promotion to Full Time Staff is legal and Justified? If not to what relief the workman is entitled?".

2. The notices were issued to the parties on receipt of the reference. The parties appeared and filed their respective Written Statements. The contention of the workman is that he joined Punjab National Bank (hereinafter called PNB for brevity) as Part-Time-Sweeper (PTS in short) in the 1/2 scale wages in Branch Office, Barh on 19-2-1985 and since then remained posted there in the same capacity. In seniority list of FTS/PTS as published by the HRD Section of PNB Regional Office, Patna vide letter No. SRMPA/HRD-PTS dated 22-7-2000 he (Shri Bhola Mali) was at Sl. No. 10 while in the seniority list of FTS/PTS of Patna A region dated 22-7-2003 his name was at Sl. No. 4. The grievance of the workman is that many PTS Junior to him namely Shri Sujit Kumar and Shri D.N. Ram who joined in 1/3rd scale wages on 1-9-1990 and 28-1-1991 respectively were promoted to Full-Time-Sweeper while he (Shri Bhola Mali) was ignored for promotion in higher scale. Further, the case of the workman is that he besides performing the work of PTS was entrusted the job of Full-Time-Subordinate Staff such as delivering Dak, Cash remittance to and from Branch Office as peon and going to Post Office to pledge or to receive the payment of National Saving Certificates. He was regularly sent to Zonal Stationary Cell, Karbigahia to bring stationary. It has also been contended on behalf of the workman that he used to open the Branch, kept all the registers/ledgers and other papers on tables and back

in the Almirah and remained present in the Branch till the time of closure of the daily business. The work from him was also taken in Cash-Department where he used to stitch the Cash-Bundles. The contention of the workman is that above mentioned works are not of a Sweeper rather the same are the job of a peon. It has been claimed that Shri Bhola Mali be posted as peon with full back wages w.e.f. 19-2-1985.

3. The contention of the management is that Shri Bhola Mali had been working in Branch Office, Barh as Part-Time-Sweeper on half scale wages and after performing the sweeping work he left the Branch every day. The matter pertaining to filling up of vacancies of PTS in Subordinate Cadre or enhancement of wages of PTS is governed by the settlement dated 7-5-1984 arrived at in course of conciliation proceeding between the management of PNB and All India Punjab National Bank Employees' Federation to which the Punjab National Bank Employees' Union, Bihar is affiliated. The vacancies of the PTS eligible for 1/2, 3/4 and Full Time Wages arising in future at the station where the Bank has more than one branch or office shall be filled up on the basis of seniority determined by converting the service put in at 1/3, 1/2 or 3/4 of scale wages into Full-Time-Service, for each conversion, if any less than 6 months as Part-Time-Employees, shall be ignored and six months and above shall be treated as one year for the purpose of determining seniority. Since there is only one Branch at Barh no posting/upgradation of PTS was done. Further, according to the management peons are posted in Barh Branch and they are working hence no occasion arose for taking the work of a peon from Shri Bhola Mali. According to the management the Manager of Branch Office, Barh utilized the services of Shri Mali for specific job like purchase of stationary, post Office work etc. off and on for which he was paid which is purely on temporary basis. Hence the demand of the workman for promotion as peon is wrong and hence not acceptable. The management contends that Shri Mali did only sweeping work 13 to 19 hrs. per week. According to the management the workman is not entitled to any relief claimed.

4. Upon the pleadings of the parties and the terms of reference the following points arise out for decision :—

- (i) Whether the action of the management of Punjab National Bank, Zonal Office, Patna in not promoting Shri Bhola Mali to higher scale wage to PTS and also denying him promotion to Full-Time-Staff is legal and justified?
- (ii) To what relief or reliefs, if any, the workman is entitled?

FINDINGS.

Point No. (i) :

5. The management examined two witnesses namely K. Mohan Das (M.W.1), Senior Manager and Lekhan Deo Sharma (M.W.2) Peon-cum-Daftary. As against that three

witnesses namely Manoj Kumar Shrivastava (W.W. 1), Rabindra Kumar Singh (W.M. 2) and Priya Ranjan Kumar (W.W. 3) have been examined on behalf of the workman. All the witnesses examined on behalf of the parties are the employees of PNB Barh Branch. Besides oral evidence the workman has produced documentary evidence Exts. W. to W/13. All the documents have been marked exhibit through the statement of the management witness Shri K. Mohan Das (M.W. 1).

6. It is an admitted fact that Shri Bhola Mali is employed in PNB Barh Branch from 1985 as PTS half. The 1st Part of the reference speaks of two points : (I) action of the management in not promoting Shri Bhola Mali to higher scale wages to PTS and (II) denying promotion to Full-Time-Staff. As regards the action of the PNB management in not promoting Shri Bhola Mali to higher Scale wage to PTS the contention of the Management is that the said matter is governed by the settlement dated 7-5-1984 arrived at between the management of PNB and All India Punjab National Bank Employee's Federation to which PNB Employees Union, Bihar is affiliated. According to the said settlement there is no scope of promotion of PTS at the station where there is only one branch of the Bank. Accordingly, in Barh there is only one branch of PNB hence no promotion/upgradation or PTS was possible. The copy of settlement dated 7-5-1984 has been filed. From perusal of the evidence adduced on behalf of the parties it appears that the witnesses of the parties including the workman are silent on that point and as such they appear to have not pressed this point. Since the parties are silent on that point, no finding can be given either for or against.

7. Coming to the 2nd point of action of the PNB management in denying promotion to Shri Bhola Mali to Full-Time-Staff I find that both the parties have adduced evidence on that point. I may mention that the workman claims that besides the work of PTS the PNB management has been taking works of a peon from him regularly. The three witnesses of the workman (W.W.1 to W.W.3) who are none else than the employees of PNB Barh Branch have stated that Shri Bhola Mali Besides doing the work of sweeping does the work of a peon. W.W. 2 is posted as Clerk-cum-Cashier in Barh Branch of PNB from October, 1986 and W.W. 3 remained posted on the same post in the said Branch from May, 1997 to May, 2001. They have stated that Shri Bhola Mali works in the Branch from 10.00 A.M. to 5.00 P.M. The workman witnesses have supported that Shri Mali takes out the Registers and Ledgers from almirah and puts them on a different tables/counters and back to almirah after closure of the business hour. The workman witnesses have also supported that Shri Mali delivers Dak, does the work of Cash remittance as peon to and from Branch Offices, goes to Post Office to deposit the National Savings Certificates and to receive the payment of NSC. Which are the works of a, peon. Not only that even the witnesses of the management have stated that Shri Bhola

Mali does the work of cheque Collection, at times he does the work of Cash-receipt also.

8. Coming to the documentary evidence adduced on behalf of the workman I find that in Dak Delivery Register, which is generally called peon book Exts. W to W/2 name of Shri Bhola Mali has been mentioned in the column of peon. Exts. W/3 to W/5 are the photo copies of letters of the Branch manager which support that Bhola Mali was deputed to receive the maturity amount of the N.S.C. Exts. W/6 to W/9 are the photo copies of Cheque Book Requisition from which show that Bhola Mali was deputed to receive the cheque-books from State Bank of India. Ext. W/10 and W/11 are the photo copies of Office Order of Punjab National Bank which show that Bhola Mali was deputed as peon for cash remittance. Photo copy of Remittance Vehicle Register Exts. W/12 and W/13 also support the same. Thus from the oral as well as documentary evidence discussed above I find that there is substance in the contention of the workman that the management of Punjab National Bank has been taking the work of Full-Time-Subordinate Staff from him (Shri Bhola Mali) since several years back. Under the circumstances I find that the action of the management of Punjab National Bank in denying promotion to Shri Bhola Mali to Full-Time-Subordinate staff is neither legal nor justified. This point is decided accordingly.

Points No. (ii) :

9. Keeping in view the discussions made above and the findings arrived at on point No. (i) above I find that Shri Bhola Mali deserves and is entitled to be posted in Punjab National Bank as Full-Time-Subordinate Staff as a peon. This point is accordingly decided.

10. In the result I find and hold that the action of the management of Punjab National Bank in denying promotion to Shri Bhola Mali, to Full-Time Subordinate Staff is neither legal nor justified and Shri Bhola Mali is entitled to be posted as Full-Time-Subordinate Staff as a peon under the management of Punjab National Bank w.e.f. 13-7-2005 the date of reference of the dispute. The management of Punjab National Bank, Zonal office, Patna is directed to post Shri Bhola Mali as Full-Time-Subordinate Staff as a peon with all facilities w.e.f. 13-7-2005 within sixty days from the date of publication of the Award.

11. And this is my Award.

VASUDEO RAM, Presiding Officer

नई दिल्ली, 20 जून, 2007

का.आ. 1991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टैट बैंक ऑफ, पटियाला के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. II, नई दिल्ली के पंचाट (संदर्भ संख्या

199/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-07 को प्राप्त हुआ था।

[सं. एल-12012/98/97-आई आर (बी-II)
अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th June, 2007

S.O. 1991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 199/1997) of the Central Govt. Industrial Tribunal-cum-Labour Court-II, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 20-6-2007.

[No. L-12012/98/97-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER:
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT-II,
NEW DELHI**

PRESIDING OFFICER: R.N. Rai
I.D. No. 199/1997

In the matter of:—

Shri Anil Kumar,
S/o. Shri Malkhan Singh,
C/o. Shri Bhagwan Das,
H. No. 255/36, Sanjay Nagar,
Meerut (UP)

Versus

The Regional Manager,
State Bank of Patiala,
C-31, Cannought Place,
New Delhi-110001

AWARD

The Ministry of Labour by its letter No. L-12012/98/97-IR (B-I) Central Government Dt. 9-12-1997 has referred the following point for adjudication.

The point runs as hereunder:—

“Whether the action of the management of State Bank of Patiala in terminating the services of Shri Anil Kumar, S/o. Shri Malkhan Singh is legal and justified? If not, to what relief is the workman entitled.”

The workman applicant has filed statement of claim. In the statement of claim it has been stated that the workman was engaged on 16-4-1990 by the then Branch Manager at the post of Peon in Meerut City Branch. The workman has been working as Peon in the bank till 21-12-1992. He was discharging all the duties of Peon just as opening and closing the bank premises, serving water and tea to the Manager and the staff of the bank. He performed all the duties of the Peon himself.

That after removing the workman, the Branch Manager engaged another Peon. The workman was not given any retrenchment compensation. He has worked for more than 240 days and certificate regarding the same has been given by the competent authority.

That the workman filed a Civil Suit in 1993 in the Court of Munsif Meerut. His case was decided in July, 1995 and his suit was dismissed as the court held that the dispute was an industrial dispute.

That the Branch Manager issued Identity Cards and certificate regarding continuous working of the workman from 15-4-1990 to 21-12-1992. That the services of the workman has been illegally terminated by the management.

The management has filed written statement. In the written statement it has been stated that the claim is absolutely erroneous and misconceived. It is totally denied and refuted that Shri Anil Kumar had been appointed as peon in Meerut City Branch of State Bank of Patiala with effect from 16-4-1990 and he remained in continuous service up to 21-12-1992. It is also denied that the Branch Manager had given his appointment as peon. It is also submitted that the Branch Manager has got no authority to employ any person in the bank. He did not work as a peon as alleged by him except to provide water, tea etc. in courtesy manner to the staff of the bank except that he did not do any work at all and his contention contrary to it is refuted in toto. On the contrary, the bank had approached M/s. Secure Well Services, a partnership firm, to provide a security guard to the bank on temporary basis and M/s. Secure Well Services had provided the service of Mr. Anil Kumar and the said partnership firm was being paid Rs. 780 per month plus 10% service charges. There was no privity of contract in between Shri Anil Kumar and the bank at any point of time. The payments were being made directly to M/s. Secure Well Services. No amount has ever been paid at all to Shri Anil Kumar as the bank had no concern with him, so far as the employment with the said is concerned.

That the workman has never acted as a peon. No relationship of employer and employee had ever existed in between the bank and the applicant.

Since the curfew was imposed in Meerut City and the working of the bank had been effected, therefore, the District Magistrate, Meerut at the request of the bank had issued curfew pass, but it does not prove that the relationship of employer and employee had existed in between the bank and the applicant Shri Anil Kumar.

That the Branch Manager has issued an identity card to show it to the police authorities, so that no action may be taken against him for egress and ingress during the curfew period.

That no such experience certificate has ever been issued by the Branch Manager. This act is totally wrong

and erroneous. These allegations have been leveled in order to give colour to the case.

That generally token was issued to him and every person is known to the bank, but sometime on account of rush of work the token would not have been issued, then it does not mean that he was a bank employee.

That the applicant is not entitled for any relief claimed in this case. It is also submitted that the applicant had filed a Misc. Case No. 41 of 1993 before the Labour Court-I, Meerut which was registered as Anil Kumar Versus State Bank of Patiala. In this case the Ld. Court Shri Jhamman Lal had given a judgment on 13-5-1997 and he has given a categorical findings to this effect that Shri Anil Kumar has failed to prove that he was employee of the bank and on technical ground too, his case was dismissed. Since a competent court has given a finding to this effect after taking oral as well as documentary evidence that he has failed to prove that he was an employee of the bank, therefore, this finding cannot be upset by this court and this case is barred by the principles of rejudicat. The true copy of the said order dated 13-5-1997 is annexed herewith for the perusal of the Hon'ble Tribunal.

That under the circumstances narrated aforesaid, the applicant's case be rejected/dismissed.

The workman applicant has filed rejoinder. In the rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the records.

The copy of the claim statement was mis-placed when the case was received from CGIT-I, New Delhi. Both the parties were directed to file the copy of the claim. The workman filed a copy of the claim and a copy thereof was supplied to the management. Objection was also invited but the management kept silent. The copy filed on the record is the true copy of the original claim and there is no objection by the management on the same.

From perusal of the pleadings of the parties the following issues arise for determination.

1. Whether the workman has worked for 240 days in the year 1990 to 1992?
2. Whether the workman is entitled to reinstatement?
3. To what amount of back wages the workman is entitled?

Issue No. I

It was submitted from the side of the workman that it is admitted case of the management that the workman was engaged as Peon.

B-12 is the photocopy of the Identify Card of the workman. The workman has been designated as peon. This document has been admitted by the Bnak. This document proves that the workman was engaged as Peon. B-13 is the photocopy of the certificate issued by the Branch Manager. The Manger has certified that the workman was wellknown to him for 2 years and 2 months and he bears a good moral character. This document has also been admitted by the management. B-13 is also a Curfew Pass issued to the workman as government servant.

B-14 is the certificate issued by the Manager, State Bank of Patiala, Meerut City on the letter head of State Bank of Patiala. The Manager has certified that the workman has worked in the bank from 16-04-1990 to 21-12-1992. This photocopy has been denied but there is no denial of the signature of the Branch Manager. B-32 is the photocopy of Character Certificate of the Manager of State Bank of Patiala. The Manager has certified that the workman has worked from 16-4-1990 to 21-12-1992.

These documents have not been denied by the management. MW-1 has not also stated categorically that the certificate issued by the Branch Manager does not bear his signature. He has only stated that he can verify the signature after going through the record. This witness has evasively stated that genuineness of the certificate issued by the Branch Manager regarding period of work of the workman can be verified after going through the record.

The documents referred to above have been admitted by the management, so it is held that the workman has worked regularly from 16-4-1990 to 21-12-1992 and thereafter his services have been terminated. The workman has filed proof of documents which are payment vouchers. It is needless to mention each and every voucher. All the vouchers filed by the workman have been admitted by the management. On the basis of the documents advereted to above and indirect admission of MW-1, it stands proved that the workman Shri Anil Kumar has worked continuously from 16-4-1990 to 21-12-1992.

It was submitted from the side of the management that the workman was engaged on casual basis. His work is based on need. His services were required whenever there was casual work.

It has not been explained anywhere as to who was the permanent peon of that Branch. The management was duty bound to disclose the name of the peon who worked regularly to dis-prove the case of the wrokman. No name has been even suggested of any other peon. Meerut City Branch was running branch at that time and the Branch cannot run in the absence of peon. It is not the case of the management that the workman was engaged casually in addition to some permanent peon.

It is not also the case of the management that the workman was engaged on leave vacancy or due to sudden increase of the work.

The workman has stated that he was discharging all the duties of a peon during that particular time. After his dis-engagement another person was engaged at his place. This indicates that the work is of permanent and regular nature. Temporary and Badlis cannot be taken again and again.

It was submitted from the side of the bank that the workman was engaged through M/s. Secure Well Services a partnership firm to provide the Security Guard to the bank on temporary basis and M/s. Secure Well Services has provided Mr. Anil Kumar and the said partnership firm was paid Rs. 780 p.m. + 10% service charge.

The bank has not filed any proof of engagement of the workman through M/s. Secure Well Services. The workman has not been designated as Security Guard. On all the documents of the bank he has been mentioned as peon. The bank has failed to establish that the workman was appointed through M/s. Secure Well Services as Security Guard. The bank has made no payment to Anil Kumar through M/s. Secure Well Services. The vouchers indicate that payments have already been made to the workman Shri Anil Kumar in his personal capacity.

It was further submitted that the case of the workman is barred by principles of resjudicata as the workman has filed a Civil Suit, in that suit it has been held that the workman has not proved that he has worked for 240 days.

The Civil Court is not a competent court in industrial matters. The Civil Court lacks jurisdiction, so the judgment of the Civil Court is judgment of a court without jurisdiction. The technicalities of resjudicata are not applicable in ID cases. The findings of a court having no jurisdiction are not any findings in the eye of law.

There is no merit in the contention of the management that the workman was engaged through M/s. Secure Well Services and the case of the workman is barred by the principles of resjudicata.

It stands proved that the workman was engaged as a peon by the management as a daily wager and he has worked regularly from 16-4-1990 to 21-12-1992. He has completed 240 days work atleast in 1991 and 1992. This issue is decided accordingly.

ISSUE NO. 2

It was submitted from the side of the workman that he has worked continuously from 16-4-1990 to 21-12-1992. So he has worked for 240 days in 1990, 1991 and 1992. He has worked for 240 days in the calendar year preceding the date of his termination. So the workman is entitled to reinstatement with full back wages.

It was submitted from the side of the bank that reinstatement is not the only relief in all the cases of illegal termination. Section 11-A of the ID Act, 1947 provides for payment of compensation also.

It was submitted from the side of the workman that compensation is payable in cases where an undertaking has become sick or it has been closed or it is in economic loss. It has not been established that the bank is in economic loss and it is a sick Industry.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of U.P. and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25 F, G of the ID Act are attracted. In section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of section 25 F are not complied. In the instant case no compensation has been paid to the workman.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid section 25 F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed un-necessarily so section 25 F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down

a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of ID Act un-constitutional. The Government has got no license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 and 309 are infringed. There is no constitutional mandate that the government is at liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government or Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and adhoc appointments to their favorites and thus the principles of equality enshrined in the constitution will be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing the services of the workman have not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in varibus labour welfare legislations.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006 (4) Scale has not annulled section 11 A of the ID Act and the legislature has

authorized this Tribunal to set aside dismissal or discharge on its consideration and direct reinstatement. The judgment cited by the management is not applicable in the facts and circumstances of the case.

A three Judges bench of the Hon'ble Apex Court has held in 1993-II-LLJ that termination of services affects the livelihood of not only of the employee but also of the dependents. So in case of illegal termination of service the workman should be reinstated.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal dis-engagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

In case the workman is reinstated with back wages the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that Section 25G and H of the ID Act are not violated.

From the decisions cited above it is settled law that in case service is terminated without payment of retrenchment compensation and one months pay in lieu of notice, termination becomes invalid. There is no cessation of service in the eye of law. The workman shall be deemed to be working continuously as such termination is illegal. It is almost settled law that in case of retrenchment without payment of retrenchment compensation the remedy available to the workman is reinstatement or payment of compensation. The management is not sick and not in economic loss. In the circumstances there is no question of payment of compensation. In view of Section 11 A of the ID Act, 1947 the cases referred to above and the facts and circumstances of the case the workman deserves reinstatement. This issue is decided accordingly.

ISSUE NO.3

The workman was removed on 22-12-1992 but he has raised this dispute in 1997 after a lapse of 5 years. It is a matter that he was engaged in Civil litigation in a wrong forum. The order sheet shows that adjournments have been sought by the workman on various occasions. The proceedings have been lingered at the instance of the workman, so the workman is entitled to get only 10% back wages in the facts and circumstances of the present case. This issue is decided accordingly.

The reference is replied thus:

The action of the management of State Bank of Patiala in terminating the services of Shri Anil Kumar, S/o Shri Malkhan Singh is neither legal nor justified. The management should reinstate the workman w.e.f. 22-12-1992 alongwith 10% back wages within two months from the date of the publication of the award.

The award is given accordingly.

Date: 16-4-2007

R. N. RAI, Presiding Officer

नई दिल्ली, 20 जून, 2007

का.आ. 1992.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्लू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 67/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-2007 को प्राप्त हुआ था।

[सं. एल-22012/47/2001-आई आर (सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 20th June, 2007

S.O. 1992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Ltd., and their workman which was received by the Central Government on 20-06-2007.

[No. L-22012/47/2001-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT

Shri A. N. YADAV, Presiding Officer.

Case No. 67/2001

Date : 7-06-2007

Shri Manzoor Ahmed through The General Secretary,
R. K. K. M. S. (INTUC)

Party No. I

Vs.

The Western Coalfields Ltd.

Party No. 2

AWARD

The Central Government, Ministry of Labour, New Delhi after satisfying the about the existence of disputes between the petitioner and respondent exercise its power under sub section (1) and sub section 2(a) of Section 10 of the Industrial Disputes Act has referred this dispute for adjudication vide order No. L-22012/47/2001-IR (CM-II) dated 3-9-2001 with the following schedule.

(2). “Whether the action of the management of Western Coalfields Ltd. through its Chief of Security, Coal Estate, Nagpur in dismissing the services of Shri Manzoor Ahmed, Security Guard its legal and justified ? If not, to what relief he is entitled to ?”

(3). The Petitioner Manzoor Ahmed Ex. Security Guard had challenged his order of dismissal from the service by raising this dispute. Since the order of his dismissal was after a domestic enquiry in view of the judgment of the Hon’ble Supreme Court in Copper’s case, I have already decided the validity of the enquiry after taking the evidence as well as the hearing of the parties and by an order dated 18-9-2006 concluded that the enquiry was legal, proper giving full opportunity to the petitioner as per principles of natural justice and it was valid. Subsequent to the above order both the parties were allowed to adduce the evidence if any regarding the perversity of the findings of the Enquiry Officer and whether the punishment was disproportionate to the nature of misconduct. However either the petitioner or the management has not adduced any evidence and they relied only on the evidence which was already on record. It will not be out of place to mention here while recording the evidence on the point of validity of enquiry; both the parties had already adduced the evidence covering the subsequent points of perversity of enquiry report as well as the proportionate of the punishment. Both the parties have submitted the written notes of argument and have also made oral submissions.

(4). It seems that the petitioner was serving as Senior Security Guard. He was having a third shift duty on the night of 18-05-2000 and when the new Security Guard came to take the charge of the next shift, found that seven bags of copper wire was found missing out of them two bags were found in a toilet of the rest room of the Workshop. About 225 Kilograms of copper wire worth rupees 20,225/- was stolen and all these had happened during the shift when the petitioner was working. Thus the theft was detected and later on even the Police report was made and enquiry by the Officials of the Western Coalfields Ltd. had taken place Which later on resulted in initiating enquiry against the petitioner and issuing a dismissal order.

(5). As indicated above by way of preliminary issue I have already concluded that the enquiry was legal and proper in accordance with the principles of natural justice. Now the following points arise for my consideration on the basis of the submission made by the parties :

- (a) Whether the findings of the Enquiry Officer are perverse?
- (b) Whether the order of dismissal is grossly inadequate to the alleged act of the petitioner.
- (c) What a relief if any?

(6). I have gone through the record on behalf of the petitioner, it has been submitted that though 225 kilograms of scraped copper wire was stolen, still the Enquiry Officer did not call the Stock Register to satisfy himself whether it was in the store or not? Here is no question of calling any Stock Register. The petitioner was working in third shift between 10.00 p.m. of 18-05-2000 till 6.00 a.m. of 19-05-2000. Immediately after starting a new shift Mr. Tiwari and

Roshan along with Mr. Maske noticed that seven bags of scraped copper wire was missing. It is neither the case of the petitioner nor of the management that on verification by Auditor etc., a shortage was found. These seven bags were just kept in the workshop which was visible and on the next day they were not found. We have evidence that they were in the store on the previous day. More over the property was seized from the compound and particularly from the latrine. There are no disputes regarding the recovery of the property from the compound itself which was expected to be in the store. Therefore the submissions have no consequence.

(7). It is submitted on behalf of the petitioner that the alleged theft was detected at 9.00 a.m. on 19-05-2000 while his duty was on the previous day. The locks were intact even as per witnesses Shri Tiwari and Roshan. There was another Security Guard who was responsible. Therefore according to union the findings of the Enquiry Officer are perverse. There is a difference in the timings between Shri Tiwari and Roshan. They are not unanimous on the number of bags kept in the store and number of bags found in the latrine. It is submitted that Shri Roshan is saying that 9 bags copper wire kept in the Workshop, out of which 2 bags were found in the toilet. However Shri Tiwari has not stated the number of bags. As indicated above when all the property which was moved from the workshop was later on searched and detected as well as seized, the alleged discrepancies between the version of two witnesses has no bearing. It does not affect the creditability of the witnesses either about the number of bags found in the toilet or about the number of bags which were kept in the workshop.

(8). It is also contended that the Enquiry Officer in his report has stated that 33 workers had submitted the complaints to the Deputy Chief Engineer (E&M) but none of them is examined. In fact the findings regarding the complaints of 33 workers is not at all as per record. It may be either 3 only and there may be typographical mistake. Nobody has stated about the complaint of 33 workers. These 3 persons Shri Tiwari, Roshan and Maske must have reported to the matter to the Deputy Chief Engineer. What ever it may be, the statement of the 33 workers has no meaning and no inference can be drawn that the findings of the Enquiry Officers are perverse.

(9). Again it is submitted on the behalf of the petitioner that the Security Guard posted on duty at workshop from 12 midnight on 18-05-2000 to 8.00 a.m. of 19-05-2000 is not examined or enquired about the alleged theft. It is also contended that the Police report was made but the F.I.R. was not disclosing the name of the petitioner and the Police had not taken any cognition by registering the offence. Therefore according to him the findings of the Enquiry Officer is perverse but the submissions can not be accepted because in a domestic enquiry the standard of proof can not be equated with the standard of criminal

proceedings in which the offences are required to be proved beyond reasonable doubts. What is expected is the satisfaction of the Enquiry Officer on the basis of the evidence adduced by the Presenting Officer. The evidence of Shri Tiwari and Roshan appears to be sufficient for establishing the charges levelled against the petitioner as mentioned above. Both the witnesses are cross examined by his next friend on behalf of the petitioner. I do not find any mistake in accepting the evidence by the Enquiry Officer. In the result the findings of the Enquiry Officer can not be levelled as perverse.

(10). On behalf of the petitioner in a written notes of argument, a point regarding the legality of approval by the General Manager (IR), Western Coalfields Ltd. to dismiss the workman is not with accordance of the Standing Orders. The person who was a charge sheeting authority has given approval. According to the petitioner the clause 28.6 of certified standing orders, the approval of competent authority specified by the Chairman is to be obtained. He was charge sheeted by the Deputy Chief Engineer (E&M), Western Coalfields Ltd., Silleware but the workman was dismissed by the Dy. Chief Security Officer and the approval of obtain of the General Manager (IR), Western Coalfields Ltd. According to him neither the Chief Security Officer was competent nor the General Manager was notified a dismissing authority. This point was in fact raised while considering the validity of enquiry and I had agreed with the management that the Deputy Chief Security Officer in the absence of Chief Security Officer was empowered to perform all his duties in his absence. He was immediate subordinate to the Chief Security Officer and he was in charge of the post of the Chief Security Officer who was on leave. Therefore I do not find that the charge sheeting authority and the authority who had power to approve was not with in accordance with the certified standing orders. Moreover this point was never raise during the enquiry proceedings. In such circumstances there are no reasons to conclude that the findings are perverse.

(11). Now shifting to the another point of whether the punishment was disproportionate to the alleged misconduct. It is a fact that a property was removed worth of rupees 20,225 in 7 bags is a dishonesty and theft in connection with employer's property. According to the management they have lost the confidence in the petitioner. It has supported that the punishment can not be treated as disproportionate to the alleged misconduct. Apparently it was dishonesty with the owner, the petitioner being a Senior Security Guard was not expected to indulge in such activities. The alleged misconduct is of a serious nature. It has been proved against the petitioner and when the management has lost its confidence, I do not think it proper to interfere in the punishment issued by it. The punishment in the existing circumstances can not be treated as disproportionate to the misconduct committed by the petitioner. In the result the punishment is also a proper and

the petitioner is not at all entitled for any relief. Hence I answer the Award in negative holding that the findings of the Enquiry Officer are not perverse or the punishment is disproportionate to the misconduct. Hence this Award.

A. N. YADAV, Presiding Officer

नई दिल्ली, 20 जून, 2007

का.आ. 1993.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वास विक्टुएलिंग यार्ड, सालरथर्न नवल कमांड कोचीन के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरनाकुलम के पंचाट (संदर्भ संखा 240 से 253 तक/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-2007 को प्राप्त हुआ था।

[सं. एल-14012/48, 47, 46, 45, 44, 43, 49, 50, 59, 60, 61, 62, 63, 58/2002-आई आर (डी यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 20th June, 2007

S.O. 1993.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 240 to 253/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Base Victualling Yard, Southern Naval Command, Cochin, and their workmen which was received by the Central Government on 20-06-2007.

[No. L-14012/48, 47, 46, 45, 44, 43, 49, 50, 59, 60, 61, 62, 63, 58/2002-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P. L. Norbert, B.A., LL.B, Presiding Officer.
(Wednesday the 6th day of June, 2007/16th Jayaistha 1929)

I. D. 240/2006 to I.D. 253/2006

I.D. 240/2006

(I.D. 1/2003 of Labour Court, Ernakulam)

Workman/Union

Shri K. B. George
S/o Shri Varghese
Aylamatu House
H. No. 22/129
Kochi-682004.

Adv. Shri C. Anil Kumar

Management

The Base Victualling
Officer Naval Base
Kochi-682004.

Adv. Shri Thomas Mathew Nellimootil.

I.D. 241/2006

(I.D. 2/2003 of Labour Court, Ernakulam)

Workman/Union

Shri K. K. Kunjumon
S/o Shri Kesavan
Kallarackaparambu
H. No. 7/219, Chandy
Kochi-682002.

Adv. Shri C. Anil Kumar

Management

The Base Victualling Officer
Naval Base
Kochi-682004.

Adv. Shri Thomas Mathew Nellimootil.

I.D. 242/2006

(I.D. 3/2003 of Labour Court, Ernakulam)

Workman/Union

Shri J. Sabrahmanian
S/o Shri Janardhanan
Madathuparambil
H. No. 20/91, Perumpadappu
Kochi-682006.

Adv. Shri C. Anil Kumar

Management

The Base Victualling Officer
Naval Base
Kochi-682004.

Adv. Shri Thomas Mathew Nellimootil.

I.D. 243/2006

(I.D. 4/2003 of Labour Court, Ernakulam)

Workman/Union

Shri Abdul Abbar K. E.
S/o Shri Ibrahim
Karimumthara House
Vadathala Jetty, Arookutty
Alapuzha District.
Adv. Shri C. Anil Kumar

Management

The Base Victualling Officer
Naval Base
Kochi-682004.

Adv. Shri Thomas Mathew Nellimootil.

I.D. 244/2006

(I.D. 5/2003 of Labour Court, Ernakulam)

Workman/Union

Shri Shamsuddin A. K.
S/o Shri Aliyarkunju
H. No. 20/644, Palluruthy
Kochi-682006.
Adv. Shri C. Anil Kumar

Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 245/2006 (I.D. 6/2003 of Labour Court, Ernakulam)	Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 249/2006 (I.D. 22/2003 of Labour Court, Ernakulam)
Workman/Union	Shri C. V. Lawrence S/o Shri Vareed H. No. 21/65, Chaniyil, Perumpadappu Palluruthy Kochi-682006. Adv. Shri C. Anil Kumar	Workman/Union	Shri N.C. Pathrose S/o Shri Chandy Nedivathara Aroor, Alapuzha District Adv. Shri C. Anil Kumar
Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 246/2006 (I.D. 7/2003 of Labour Court, Ernakulam)	Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 250/2006 (I.D. 23/2003 of Labour Court, Ernakulam)
Workman/Union	Shri T. J. Shaju, Lawrence S/o Shri Joseph H. No. 10/1407, Amaravathy P. O. Kochi Adv. Shri C. Anil Kumar	Workman/Union	Shri V. K. Koya S/o Shri Kunhammedu Kutty H.No.7/1211, Meparambil Kochi-682002. Adv. Shri C. Anil Kumar
Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 247/2006 (I.D. 8/2003 of Labour Court, Ernakulam)	Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 251/2006 (I.D. 24/2003 of Labour Court, Ernakulam)
Workman/Union	Shri N.A. Paul S/o Shri Augustine Nanathu Veedu Aroor. Adv. Shri C. Anil Kumar	Workman/Union	Shri K. Mathai S/o Shri Koshy Melethil Puthenveedu Mookoodu P.O., Mulavana Kollam District. Adv. Shri C. Anil Kumar
Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 248/2006 (I.D. 21/2003 of Labour Court, Ernakulam)	Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil. I.D. 252/2006 (I.D. 25/2003 of Labour Court, Ernakulam)
Workman/Union	Shri N.K. Rasheed S/o Shri Koya Hassan H.No.20/287 Edakochi. Adv. Shri C. Anil Kumar	Workman/Union	Shri K. Saharuddin S/o Shri Kader Meera Ravuther C.C. No.23/128 B Edakochi Kochi-682006. Adv. Shri C. Anil Kumar
		Management	The Base Victualling Officer Naval Base Kochi-682004. Adv. Shri Thomas Mathew Nellimootil.

I.D. 253/2006

(I.D.29/2003 of Labour Court, Ernakulam)

Workman/Union Shri K.M. Siraj

S/o Shri Mohammed

H.No.7/846, D.S. Road,

Kappalandi Mukku

Kochi -682 002.

Adv. Shri C. Anil Kumar

Management : The Base Victualling Officer

Naval Base

Kochi -682 004.

Adv. Shri Thomas Mathew Nellimootil.

AWARD

These are references made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. Since the reference is common except the names of workers one of the schedules of references alone is quoted for convenience :

“ Whether the denial of employment to Sh. C. V. Lawrence by the management of Base Victualling Yard, Southern Naval Command, Naval Base, Cochin is legal and justified? If not to what relief the workman is entitled to ? ”

2. As the facts and evidences are identical these cases are tried jointly and evidence is adduced in I.D. 245/2006 treating it as the leading case. The facts of the case in brief are as follows :—

According to the workmen they were employed in the Base Victualling Yard of Naval Base, some in 1962 and others subsequently and they had been working continuously till March, 2000. They were engaged for loading and unloading goods like sugar, rice, wheat, atta, salt, oil etc. There was wage settlement between the union and management from time to time and the period of the last settlement expired on 31-7-1999. When the workman demanded wages at higher rate they were denied employment from March, 2000 onwards. The workmen contend that it is in violation of statutory provisions. The workers had approached Deputy Labour Officer and District Labour Officer. Since those authorities did not have jurisdiction under Headload Workers Act as the management is a Central Government institution, no relief could be granted. Hence the workmen approached the Assistant Labour Commissioner (Central) with the dispute and thus the reference was made by Government. The workers are entitled to be reinstated with full back wages and consequential benefits.

3. According to the management the workmen are not employees of the management. The management is having 29 unskilled permanent labourers who are attending to loading and unloading work in the Naval Base.

Whenever the permanent employees were not able to carry out the work the management used to entrust the additional work to Cochin Thuramuga Thozhilali Union (CTTU) of Willington Island. They used to deploy their personnel on quotation basis and the rate was fixed according to the agreement between union and management. The management had no control over the labourers of the union. The engagement of the union was purely on *ad hoc* contractual basis and only on some occasions. It is denied that the workers were employed since 1962 for loading and unloading work. The CTTU had deployed labourers during 1996, 1997 & 1998. In 1999 automatic lift tables were installed in the Base Victualling Yard for easy and efficient handling of materials in the Yard for unloading and stacking. This reduced the manpower. Even the permanent employees of the Naval Base did not have enough work. Therefore there was no need for additional manpower. Whenever the union handled the work they were paid remuneration in lump sum on the days of work against receipts. There was no denial of employment. The management cannot identify the workers who were deployed by the Union. The management is not concerned with the workers sent by the union as the management had no control over such workers. Hence the workmen are not entitled for any relief.

4. In the light of the above contentions the only point that arises for consideration is :

“ Whether there is denial of employment ? If so, is it legal ? ”

The evidence consists of the oral testimony of WWI and documentary evidence of Exts. W1 to W130 on the side of workmen and MW1 and Exts. M1 to M4 on the side of management.

5. **The point:**

It is the case of the workmen, 14 in number that they were employed as casual labourers in the Base Victualling Yard of Naval Base some of them in 1962 and others in 1976, 1980, 1993, 1995, 1996 etc. for loading and unloading of goods. But all of them were denied employment in March, 2000. They say that they had been working continuously since their respective dates of engagement. The work of these employees was to unload provisions and other goods brought by trucks to the Victualling Yard. Ration for the entire Southern Naval Command is brought to the Base Victualling Yard. On an average 30 loads of trucks arrive per month to the Victualling Yard with provisions. But according to the management the unloading work is done by their permanent workers, 29 in number. It is when they are unable to carry out the work that the help of Cochin Thuramuga Thozhilali Union (CTTU) is requested. This was only occasional engagement on quotation basis. The union used to send workers whose identity was not the concern of the management. The management used to make payment on piece-rate basis in lump sum for the day's work to the union representative and not to the workers.

individually. The management is not maintaining any record regarding the workers of CTTU. The management had no control and had not exercised supervision over the workers employed by the union. Thus the management denies that the workmen in these cases are the employees of the management. Why the management so contends is due to the following reasons. One, there are 29 permanent unskilled workmen for loading and unloading purposes. Two, whenever additional manpower was required it was CTTU which was requested to undertake the additional work and payment was made not to the workers but to the representative of the union.

6. Exts. M2 to 4 are produced to prove that Government had sanctioned 29 posts of unskilled labourers in the Naval Base. Exts. 2 to 4 are sanction orders, extension order and muster roll of 29 permanent employees. It is no doubt true that permanent unskilled labourers are there in the Base Victualling Yard. But the management has admitted in the written statement that occasionally when additional manpower was required they used to entrust additional work to CTTU. According to them this occasional work was done during 1996, 1997 & 1998 and during no other period. MW 1, the Assistant Naval Store Officer, has given evidence as aforementioned. Hence on the basis of Exts. M2 to 4 the management cannot deny the fact of engagement of outsiders for loading and unloading purpose. How long they have been working as casual employees of management or as workers of union is a different question. In spite of 29 permanent unskilled labourers of the management outsiders were employed even going by the case of the management.

7. The management treats CTTU as a contractor which had quoted rates for unloading work. But there is no written contract or agreement between CTTU and the management with regard to supply of labour. The management relies on Ext. M1 series vouchers to show that payment was made to the union and not to the workers under the union. According to the management Ext. M1 series go to show that it was the union which had undertaken the work and not the individual workmen. Ext. M1 series are 27 vouchers relating to the period 1996 to 1998. The amount as per Ext. M1 series were received by one Subramanian who is designated in vouchers as CTTU labourer. It is admitted by WWI, one of the workmen, that for convenience the management used to give wages for the work done for a day in lump sum to one of the workmen. After accepting money by one workman on behalf of all, the workers themselves used to distribute money among them. Shri Subramanian was not an office bearer of CTTU. He was one of the labourers and a party to I.D. 242/2006. Therefore when he received money from the management as per Ext. M1 series it was on behalf of all the workmen and not on his own behalf nor was it received on behalf of CTTU as he was not an office bearer of CTTU. He was also not authorized by the union to receive money from the

management. Neither the management nor the workmen have a case that money received by the labourer, Subramanian was being entrusted to union and the union used to distribute wages to the workers. Therefore on the basis of Ext. M1 series the management's case, that payment was made to the union and not the workmen, cannot be accepted. The management has also a case that the union used to submit quotation for unloading work. But no such quotation is produced before this court. It is to be noted that workers are members of CTTU. The union used to negotiate with the management for better service conditions and wage revision etc. The problems of the workers have to be espoused before labour authorities by a union and not by workmen individually. That is why the workers join union. Besides, they get more bargaining power under a trade union. So far as CTTU is concerned they had raised demand for higher wages to the management and there were settlement talks. The dispute was also taken up under Headload Workers Act, before the Deputy Labour Officer and District Labour Officer by the union. Ext. W1 is a letter issued by the management to the Secretary of CTTU stating that the rates of wages demanded by the union was unreasonably high and the union was requested to reduce the rate. Ext. W2 is a letter issued by the union to the Base Victualling Yard requesting to settle the demands of the union for higher rates of payment. Ext. W3 is again a letter issued by union to Base Victualling Officer proposing higher rates of wages, the details of which are mentioned in the letter. They also demanded some more terms of settlement with regard to service conditions of workers. Ext. W4 is an order of Deputy Labour Officer on the basis of a complaint of the union. Ext. W5 is a Memorandum of Settlement arrived between the union and the management regarding loading and unloading work in Base Victualling Yard. The settlement is dated 15-6-1994. As per the settlement the management agreed to increase the existing wage rates by 36%. The settlement was arrived in the presence of Deputy Labour Officer. These documents go to show that the union used to intervene for the workers for the purpose of getting better service conditions and getting more wages for the workers who are members of the union. There was no case before the labour officer that the union was a contractor. If the union was a contractor or if the management used to engage the union on the basis of quotation for loading and unloading work, there was no need to negotiate and settle wage rates and service conditions. It was enough to accept the lowest quotation. There was no such case for the management before the labour officer while settling the demands of union (Ext. W5 Memorandum of Settlement). So also, there was no reason for the management to request the union to bring down the rates of wages to a reasonable figure by Ext. W1 letter, if the union was merely a contractor. The case of the management before this court is not supported by any documentary evidence. On the other hand Exts. W1 to 5 referred above go against the case of the management.

Thus what comes out of evidence is that the workmen who were members of CTTU were engaged for loading and unloading work in Base Victualling Yard of Naval Base. The next question is how long they were engaged and whether their service was continuous and whether they have acquired any right to continue in service or for any other benefit under I.D. Act.

8. I have already mentioned that CTTU is not a contractor. The workers who were engaged in the Base Victualling Yard were members of the union. That is the relationship between the workers, union and the management. No union office bearer or representative used to be in the Base Victualling Yard to supervise the work or control the workers. Even the management has no case that anyone from the union used to be in the yard to supervise the work. The workmen used to unload goods from the lorry and stack them in the godown of the yard. Somebody had to supervise and direct the workers during their work. No outsider could enter the premises of Naval Base without permission. In the circumstances the supervision could be done and control could be exercised only by the officers of the Base Victualling Yard. No doubt the workmen were only casual labourers. But according to them all the 14 workers were working since a long time up to March, 2000. However according to the management they were engaged only occasionally during 1996, 1997 and 1998 and not before or after. MWI has reiterated this contention when he was in the box. However this case of the management is belied by the documentary evidence produced by the workmen. Ext. W 6 series are photo passes issued to the workmen except J. Subramanian (workman in I.D. 242/2006). WWI says that Subramanian's pass was taken back by the Management when he approached them for work after termination. It is an admitted fact that passes are issued to workers once in 3 months. Ext. W 6 series were issued for the period from 22-2-2000 to 22-5-2000. Before the expiry of the period of pass in March, 2000 the workers were denied employment. It was Subramanian who used to meet Assistant Base Victualling Officer for getting request letter addressed to the Security Officer at the gate for issuing passes to the workers. According to the number of workers mentioned in the request letter security officer at the gate used to issue individual passes to the workers. Thus Ext. W 6 series passes were issued on 22-2-2000. It is not disputed that passes have to be surrendered to the management whenever new passes are to be issued. Since the employment was denied to the workmen in these cases before the expiry of the period of passes there was no occasion to renew passes and hence they did not surrender Ext. W 6 series passes (13 in number). However Shri Subramanian had approached the management requesting for work, after termination. He was then asked to surrender his pass. Thus Subramanian alone has not produced the pass. Ext. W 6 series go to show the case of the management that these workmen had worked only till 1998 is not true.

They were given work as per Ext. W 6 series even in 2000. That apart, the workers have produced a number of letters of request issued by the Assistant Base Victualling Officer to the Deputy JCO of the gate for the purpose of issuing passes to the workers. Such letters of request are Exts. W 7 to 130. They relate to different periods up to 8-2-2000. This cuts at the very root of the case of management that the workers were engaged only on limited occasions as mentioned in paragraph 2 of the written statement, i.e. 4 times in 1996, 3 times in 1997 and 14 times in 1998. In fact the management had engaged the workmen prior to 1996 and after 1998. But the management suppressed this fact both in pleadings and evidence. MWI, an officer of the management too thought it appropriate to be loyal to the management. In spite of Exts. W 7 to 130 the management contends that they have no connection whatsoever with the workmen in these cases and they do not know them and that Exts. W 7 to 130 were issued to Subramanian and not to the workmen. Exts. W 9 to 34, 47, 49 to 53 & 57 to 110 are letters of requests of Assistant Base Victualling Officer to the officer in charge of security at the gate requesting to issue fixed number of passes to the workers who will be brought by Shri Subramanian. I have already mentioned that Shri Subramanian is only a worker, not an office bearer of the union. He is only a member of the union. He too has raised a dispute and is the claimant in I.D. 242/2006. I have also mentioned above that for the sake of convenience of both parties Shri Subramanian on behalf of all workers used to approach the Assistant Base Victualling Officer for getting request letter for the purpose of passes. This was only a convenient arrangement. Without passes nobody can enter the premises of Naval Base. Without the request of Victualling Officer no passes would be issued from the gate to the workers who have to enter the Base Victualling Yard. Therefore, for getting passes for the workers the Victualling Officer had to be contacted whose office is inside the Naval Base. All the workers en masse cannot approach the Base Victualling Officer for getting request letter. That is why Shri Subramanian was entrusted with that work. That apart, there are a number of other request letters wherein the name of Subramanian is not mentioned. Those letters are merely letters of requests to issue passes to a certain number of workers present at the gate without mentioning anybody's name. Those letters of requests are Exts. W 7, 8, 35 to 46, 48, 54 to 56, 83, 111 to 126 and 128 to 130. Ext. W 121 is a letter of request by Base Victualling Officer to the Commanding Officer, INS Venduruthy dated 4-6-1999 requesting to permit 4 workers mentioned in the letter to enter the Naval Base for work in the Base Victualling Yard. It is mentioned in the letter that the 4 workers mentioned in the letter were regular loading/unloading labourers of Base Victualling Yard belonging to CTTU. According to WWI he has been working since 1962 in the Base Victualling Yard. Thus the documents produced by the workmen, Exts. W 1 to 130 support their case that they have been working under the management and not under a

contractor and for a very long time even prior to 1996 and after 1998 up to March, 2000. Though the management has a case that since 1999, when automatic lift tables and battery operated stackers were installed the manpower is reduced and there is no need for engaging additional hands other than the permanent employees of Naval Base for loading and unloading work, it is not substantiated. It has come out from the very testimony of MW1 that for stacking goods and operating the machines manpower is required. It is also not shown by the management that supply of goods is reduced. Normally the supply of provisions is bound to increase year by year. No doubt they were casual workers. However if they had been working continuously for a period of one year or 240 days during 12 calendar months prior to the termination they are entitled to the benefits u/s-25F of I.D. Act. S-25F reads :

"S-25F. Conditions precedent to retrenchment of workmen.

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice; wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day's average pay (for every completed year of continuous service) or any part thereof in excess of six months;
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

9. The burden to prove continuous service for a period of one year or 240 days is on the workman. The observation of the Hon'ble Supreme Court in *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan* (2004) 8 SCC 161, *Municipal Corp. Faridabad v. Siri Niwas* (2004) 8 SCC 195 and *H.U.D.A. v. Jagmal Singh* 2006-III L.L.J.152 supports this view. In *Yellatti R.M v. Assistant Executive Engineer* 2006-I.L.L.J. 442 though holds the same view it is further observed that the workman will have practically no documents in his possession to prove his case. He could discharge his burden only by mounting the box and stating his case and also calling for records from the management. If the management is not producing the records called for or not offering satisfactory explanation for non-production, then the court will have to see whether the workman has satisfactorily discharged his

burden. So far as the instant case is concerned, the workmen had called for production of Imprest Register and original vouchers from the management as per I. A. 12/2007 . There was an order either to produce documents or to file an affidavit. The management preferred the latter and filed an affidavit stating in paragraph 5 that the Imprest Registers are voluminous and the claim of the workmen is vague. The workmen had worked only up to 1998. The Imprest Register called for pertains to 1999 onwards. They are irrelevant for the purpose of the case. But it is to be noted that the very case of the workmen is that they were working even subsequent to 1998 up to March, 2000. They have also a case that after denial of employment to them other workers were engaged by the management for loading and unloading work. Hence, as per I.A. 12/2007 the workmen wanted production of Imprest Registers of 1997 March to 1999 March and from 2005 March to 2006 March. It is not for the management to decide whether they are relevant or not. There is an order by the Court to produce the documents. The relevancy of documents is to be considered at the time of evidence. That apart, going by the case of the workmen the registers called for are relevant. There is no justifying reason for non production of Imprest Registers. Why the Imprest Registers are called for, is because entries relating to vouchers are made in Imprest Registers. This is admitted by MW 1. So a comparison of the entries in the Imprest Registers with vouchers will bring to light whether the workmen, 14 in number, had worked under the management and if so how long they had worked. Regarding original vouchers the management stated in their affidavit that the original vouchers were destroyed after a period of 5 years as per rules. Ext. MI series are photocopies of those vouchers. I fail to understand the purpose of keeping photostat copies after destroying the original. It makes no sense in keeping copies and destroying the originals. If as per rules for destruction the period of retention is 5 years regarding vouchers then they are no more to be retained after that period. Moreover the dispute was raised in 2002. Ext.MI to MI(m) (14 vouchers) relate to the period April - May, 1998. Five year period would expire only by 2003 April. By that time the dispute was raised and the reference was made to court. The management was not supposed to destroy records pertaining to the dispute. Therefore, at least the originals of M 1 to M 1 (m) should have been retained. If they were not aware of any dispute (which cannot be advanced by the management) there was no need for keeping copies of vouchers. Thus the workmen are not able to bring out the truth as the original vouchers and imprest registers are not produced. Since only copies of vouchers are produced it could be that the management has chosen vouchers of a particular period. Whether Ext. MI series are the only vouchers pertaining to the workmen, can be found out only on production of Imprest Registers. The workmen have discharged their burden of proving continuous service by calling for the records from the management and mounting the box to state their case.

Left to themselves they have no records other than Exts. W6 to 130 which happened to be in their possession to prove the continuous service.

10. On the other hand the management has adopted evading methods and suppressive tactics to dislodge the case of the workmen that they were working continuously for a number of years. In the circumstances an inference has to be drawn that the workmen, 14 in number, were working continuously for a period of one year and more from 1996 to March 2000 in the Base Victualling Yard as loading and unloading casual workers. The employer was the management. They were supervised and controlled by the management during their work. They were paid by the management. Their wages were revised from time to time by negotiation between the union and management. Thus they are workmen falling within S-2 (s) of I.D. Act. Though the workmen were working in the Naval Base they were not in active defence service and hence such workmen do not fall under the exclusion clause of S-2 (s) (i) of the Act i.e. persons who are subject to Navy Act, 1957.

11. The management submitted that there is no evidence to prove that all the 14 workmen were engaged by the management. The letters of request, Exts. W7 to 130 produced by the workmen go to show that all the 14 workmen were employed continuously. The letters of request mentioned above are not all the request letters, but only some that the workmen were able to get at. The records of employment are with the management. Whatever the workmen had with them were produced. However Ext. W6 series gate passes will show that 13 workmen were employed in 2002. Shri Subramanian has not produced gate pass as it was taken back by the management when he approached for work after March, 2002. Had the management produced the Imprest Register and original vouchers called for, the truth would have come out. Therefore the contention of the management that all the 14 workmen were not employed, cannot be accepted.

12. Since no notice or compensation was given to the workmen at the time of retrenchment it is in violation of S-25F of I.D. Act and the termination is illegal. Such notice or compensation should have been given at the time of termination and subsequent compliance is not sufficient. Hence the workers are entitled to be taken back in the status as they were at the time of termination (casual labourers). It was submitted by the learned counsel for the management in the light of the decision in *Secretary State of Karnataka v. Uma Devi* 2006 4SCC 1 that the workmen have no right either for reinstatement or for regularisation. Uma Devi's case has no application in this case as the workmen do not claim absorption, but only reinstatement as casual labourers. The decision referred by the learned counsel is regarding absorption and regularisation.

13. In the light of what is stated above I find that the claimants are 'workmen' within the definition of S-2 (s) of I.D. Act. They were denied employment without notice or

compensation, violating S-25F of the Act. Hence they are to be reinstated as casual labourers.

14. In the result, an award is passed finding that the denial of employment to the workmen (in 14 cases) by the management is illegal and unjustified and is in violation of S-25 F of I.D. Act. The workmen are entitled to be reinstated as casual labourers in the Base Victualling Yard of Naval Base. However they are not entitled for back wages. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 6th day of June, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workmen/Union :

WWI - Shri C.V. Lawrence.

Witness for the Management :

MW1 - Shri G.K. Nair.

Exhibits for the Workman/Union :

- WI - Letter dated 9-10-1991 issued by the management to the Secretary, CTTU regarding revision of wage rates.
- W2 - Photostat copy of letter dated 19-2-1991 issued by Joint Secretary, CTTU to Base Victualling Officer.
- W3 - Photostat copy of letter dated 30-5-1994 issued by Joint Secretary, CTTU to Base Victualling Officer.
- W4 - Photostat copy of letter No.252/93 issued by Dy. Labour Officer intimating joint conference of parties.
- W5 - Photostat copy of Memorandum of Settlement dated 15-4-1994.
- W 6 series - Photostat copies of permit passes of workers (13 Nos.)
- W7 to 130 - Letters of request for gate pass by Assistant Base Victualling Officer.

Exhibits for the Management:

- M 1 series - Photostat copies of payment vouchers (22 Nos.)
- M2 - Letter No.CS/4265/NHQ/3689/D (N.II) dated 27-6-1978 issued from M/o Defence regarding fixation of revised service and civilian complement.
- M3 series - Letters issued from M/o Defence regarding extension of sanction relating to civilian complement.
- M4 - Duplicate of Muster Roll of Base Victualling Yard for the month of January, 1997.

नई दिल्ली, 21 जून, 2007

का.आ. 1994.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में श्रम न्यायालय पूणे के पंचाट (संदर्भ संख्या 226/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-07 को प्राप्त हुआ था।

[सं. एल-17013/7/98-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 21st June, 2007

S.O. 1994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 226/1999) of the Labour Court Pune (Maharashtra) as shown in the Annexure in the Industrial Dispute between the management of LIC of India and their workmen, received by the Central Government on 20-06-2007.

[No. L-17013/7/98-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE MRS. S.S. SAWANT, PRESIDING OFFICER,
FIRST LABOUR COURT, PUNE.

Reference (I.D.A.) No. 226 of 1999

BETWEEN

L.I.C. of India
reprsented through
Sr. Divisional Manager,
L.I.C. of India, Jeevan Prakash,
Divisional Office, Shivajinagar,
Pune-411 005. First Party

AND

Its Workman (Smt. M.B. Shinde)
Represented through
General Secretary, Pune Division,
Insurance Workers' Organisation,
Registration No. PN 353
185 Shaniwar peth,
Pune-411 030. Second Party.

CORAM : MRS. S. S. SAWANT.

APPEARANCES : Shri Pradhan, Advocate for
first Party.
Shri. A.B. Deshpande, Advocate for
Second Party.

AWARD

Date : 19-04-2007

This reference is made to this Court by the Desk Officer, Central Government Govt. of India/Bharat Sarkar,

Ministry of Labour/Shram Mantralaya, New Delhi under Clause(d) of sub-sec. (1) and sub-sec. (2A) of S. 10 of I.D. Act 1947 for adjudication between Life Insurance Corporation of India, Pune and Its workman (Smt. M.B. Shinde) over the following demand as mentioned in the schedule.

SCHEDULE

“Whether the action of the management of LIC of India in relation to its Divisional Office, Pune, in awarding the punishment of reduction of lower stage in the time scale of Asstt. by three stages and recovery of Rs. 1500 from Mrs. M.B. Shinde is legal and justified? If not, to what relief the said workman is entitled to?”

1. Second party appeared and filed his Statement of Claim at Exh. 12. Second party submitted that first party is a statutory corporation came into existence by virtue of LIC of India Act 1956. First party has around 100 Divisional Offices Second party is a registered trade union and it has constitutional power to function and enroll membership within territorial jurisdiction of subjected divisional office. The dispute is about one Mrs. M.B. Shinde who is member of said union. Hence the union has itself raised the dispute. It is further submitted that Mrs. Mangala Balasaheb Shinde Assistant S.R. No. 440635 branch 955 was working in Phaltan Branch office under Satara divisional office as an Assistant. In response to notification of Satara divisional office, she applied for transfer of her service to Wai Branch office being her native place. It is further submitted that she was transferred to Wai and afterwards she claimed transfer T.E. of Rs. 1518 and which was duly sanctioned by Satara Divisional Authorities for the same amount. It is further submitted that chargesheet dt. 15-4-95 was served to Mrs. Shinde for wrongly claiming transfer T.E. The charges involved in the chargesheet were the receipt No. 3637 dt. 28-10-93 is not a receipt and it is a transport slip and the transport company viz. Kamgar Motor Transport, Wai had given only quotation and they did not transport the luggage. Mrs. Shinde had given the reply to the chargesheet and refuted the charges levelled against her. Enquiry was held in respect of those charges. Mr. RK Thipse was the enquiry officer. That enquiry was summarily quashed by Sr. Divisional Manager, Satara D.O. On 19-6-95 and denovo fresh enquiry was ordered appointing another enquiry officer Mr. A.H. Kulkarni, then Manager (Accounts) Satara D.O. It is further submitted that said enquiry was quashed only because direct interference of disciplinary authority was visible. Fresh enquiry was initiated by Mr. A.H. Kulkarni. The enquiry report of Mr. Kulkarni shows that the receipt No. 3637 is the receipt itself and the charges levelled against Mrs. Shinde were not proved. The said report is produced alongwith statement of claim. It is further submitted that in spite of being non guilty as per the enquiry report, the show cause notice was issued on 1-8-95 by then Sr. Divisional Manager (Disciplinary Authority) MR. S.K. KAPHALI, proposing

penalty of three stages down in the time scale of Assistant and recovery of Rs. 1518/- Said report is produced on record. Mrs. Shinde had given reply to the show-cause notice and refused the findings of disciplinary authority. Final order was given by Sr. Divisional Manager, Pune on 1-9-96 confirming proposed penalty in the show cause notice. Said order is produced on record. It is further submitted that, against the order of disciplinary authority appeal was made to Zonal Manager. Appellate authority has confirmed the penalties previously given. That order is also produced on record. It is further submitted that a memorial has been submitted on 7-2-98 by Mrs. Shinde. Thereafter, dispute is referred to this Court for adjudication. It is further submitted that the enquiry officer had acquitted Mrs. Shinde in the enquiry report even then disciplinary authority had imposed penalty. It is submitted that in awarding punishment of reduction of 3 stages in the time scale is in utter disregard to the principles of natural justice. It is further submitted that the charges levelled against Mr. Shinde were fictitious and victimising. The impugned order of recovery of Rs. 1500 is unlawful. The order of recovery of Rs. 1500 and reduction in 3 stages in time scale is unlawful and shockingly disproportionate. Hence it is prayed that the order dt. 11-9-96 be declared as illegal, null and void and first party be directed to refund Rs. 1500 to disputant employee with interest. It is further prayed that first party be directed to pay the increment of the disputant alongwith interest.

2. First party appeared and contested the reference by filing its WS at Ex. 20. First party had denied the averments in the S.C. First party submitted that the competent authority has referred this matter to this court to decide whether the action of the management of LIC of India awarding the punishment of reduction of lower stage in time scale of Assistant by 3 stages and recovery of Rs. 1500/- from Mrs. Shinde is legal and justified? If not to what relief the said workman is entitled to? This order was passed on 31-3-99 and matter was referred for adjudication to this Court. It is submitted that during the conciliation proceeding second party has filed appeal before the chairman of the first party. Thereafter, considering the facts and circumstances of the case, the chairman of first party has passed the order and reduced the punishment to reduction of basic pay by one stage. So the order of punishment has been modified. So the reference has become redundant and this Court has no jurisdiction to adjudicate the dispute. It is submitted that first party is a body corporate established u/s 3 of LIC Act, 1956 First party had given details about the powers of the corporation as per the provisions of LIC Act. It is further submitted that dispute is raised by the union which is registered under the Indian Trade Unions Act. However, second party has not produced any document before this Court to show that the concerned employee was the member of the said union. So the said union has no locus standi to represent the concerned employee. Therefore, present reference is

not maintainable. It is submitted that the disciplinary authority is empowered to impose any of the penalty. The disciplinary authority can itself enquire into such of the charges as are not admitted So the disciplinary authority has every right to decide the matter independently. It is further submitted that while issuing the show cause notice dt. 1-8-95 the disciplinary authority has given the reason for his decision. So, the action of disciplinary authority is clearly within the rules and regulations. The disciplinary authority was not satisfied with the reply given by the employee. It is further submitted that a memorial dt. 7-2-98 was addressed by the employee to the chairman LIC of India. A memorial was considered by the competent authority and the penalty was reduced to reduction in basic pay by one stage and the recovery of loss of Rs. 1500 was maintained. This order was passed on 7-1-2000, which was duly communicated to the employee. However, this fact was not brought to the notice of this Court by the second party. It is prayed that reference by rejected.

3. After considering the pleadings of both the parties, my Ld. Predecessor had framed following issues at Ex. 22, I have given my finding to those issues along with the reasons as follows.

ISSUES

FINDINGS

1. Does the second party prove that the enquiry based on chargesheet dt. 15-4-95 was quashed? ..Affirmative
2. Does the second party proved the initiation of fresh enquiry against her and accordingly the enquiry officer A.H.Kulkarni has held the same? ..Affirmative
3. Does the second party prove that without any enquiry a show cause notice dt. 1-8-95 was issued to her by then Divisional Manager (Disciplinary Authority) S.K. Kapathi proposing of penalty of three stages down in the time scale and recovery of Rs. 1518? ..Affirmative
4. Whether this Court has jurisdiction to entertain and try this reference in view of modification of the order of competent authority? ..Negative
5. Is second party entitled declaration as claimed? ..Negative
6. Is second party entitled refund of Rs. 1500 18% p.a.? ..Negative
7. Is second party entitled for back increments? ..Negative
8. What Award? ..As per order below.

REASONS

4. In the present reference, second party has filed examn-in-chief on affidavit of Smt. Mangala Shinde at Ex. 32 and examined one witness Mr. Prasad at Ex. 42.

Issue Nos. 1 to 8

To prove her contention, second party has filed her examn-in-Chief on affidavit. Smt. Mangala Shinde deposed in her examn-in-chief that she had submitted memorial to the Chairman LIC of India on 7-2-98. She had received reply to her memorial on 17-2-2000. In the memorial the Chairman's information regarding her so called alleged guilt is in conformity with the views taken by the Disciplinary Authority as well as Appellate Authority. The order was pasted by the Chairman with a view to vitiate the reference. She has denied the contentions of first party in written statement. Smt. Shinde further deposed that first party is a statutory corporation came into existence by virtue of LIC of India Act 1956. First party has around 100 Divisional Offices. Second party is a registered trade union and it has constitutional power to function and enroll membership within territorial jurisdiction of subjected divisional office. The dispute is about one Mrs. M.B. Shinde who is member of said union. Hence the union has itself raised the dispute. Second party Mrs. Mangala Balasaheb Shinde deposed that she was working in Phaltan Branch office under Satara divisional office as an Assistant S.R. No. 440635 branch-955. In response to notification of Satara divisional office, she applied for transfer of her service to Wai Branch office being her native place. She further deposed that she was transferred to Wai and afterwards she claimed transfer T.E. of Rs. 1518 and which was duly sanctioned by Satara Divisional Authorities for the same amount. She further deposed that chargesheet dt. 15-4-95 was served to Mrs. Shinde for wrongly claiming transfer T.E. The charges involved in the chargesheet were the receipt No. 3637 dt. 28-10-93 is not a receipt and it is a transport slip and the transport company viz. Kamgar Motor Transport, Wai had given only quotation and they did not transport the luggage. Mrs. Shinde had given the reply to the chargesheet and refuted the charges levelled against her. Enquiry was held in respect of those charges. Mr. R.K. Thipse was the Enquiry Officer. That enquiry was summarily quashed by Sr. Divisional Manager, Satara D.O. On 19-6-95 and *de novo* fresh enquiry was ordered appointing another enquiry officer Mr. A.H. Kulkarni, then Manager (Accounts) Satara D.O. It is further submitted that said enquiry was quashed only because direct interference of disciplinary authority was visible. Fresh enquiry was initiated by Mr. A.H. Kulkarni. The enquiry report of Mr. Kulkarni shows that the receipt No. 3637 is the receipt itself and the charges leveled against Mrs. Shinde were not proved. The said report is produced alongwith statement of claim. She further deposed that in spite of being non guilty as per the enquiry report, the show cause notice was issued on 1-8-95 by then Sr. Divisional Manager (Disciplinary Authority)

Mr. S.K. Kaphai, proposing penalty of three stages down in the time scale of Assistant and recovery of Rs. 1518 Said report is produced on record. Mrs. Shinde had given reply to the show case notice and refused the findings of disciplinary authority. Final order was given by Sr. Divisional Manager, Pune on 1-9-96 confirming proposed penalty in the show cause notice. Said order is produced on record. She further deposed that against the order of Disciplinary Authority appeal was made to Zonal Manager. Appellate Authority has confirmed the penalties previously given. That order is also produced on record. She further deposed that a memorial has been submitted on 7-2-98 by Mrs. Shinde. Thereafter, dispute is referred to this Court for adjudication. She further deposed that the Enquiry officer had acquitted Mrs. Shinde in the enquiry report even then disciplinary authority had imposed penalty. She further deposed that in awarding punishment of reduction of 3 stages in the time scale is in utter disregard to the principles of natural justice. She further deposed that the charges levelled against Mr. Shinde were fictitious and victimising. The impugned order of recovery of Rs. 1500 is unlawful. The order of recovery of Rs. 1500 and reduction in 3 stages in time scale is unlawful and shockingly disproportionate. She further deposed that the order dt. 11-9-96 be declared as illegal, null and void and first party be directed to refund Rs. 1500 to disputant employee with interest. She further deposed that first party be directed to pay the increment of the disputant alongwith interest.

5. Second party has examined one witness Mr. Eknath Laxman Prabhat at Ex. 42 to prove that Smt. Mangala Shinde was member of the union. Witness Mr. Prabhat deposed that he is serving as a clerk with clerk with L.I.C. Pune. He is general secretary of Pune Division Insurance Workers Organisation affiliated to Bhartiya Majdoor Sangh. He knew Smt. Mangala Shinde, who is member of their union. He is acquainted with Smt. Shinde since 1995. They collected subscription from the members of the union. Smt. Shinde had paid subscription to the union. He had produced five receipts about payment of subscription by Smt. Shinde, which are at Ex. 43.

6. First party did not led any oral evidence. So, there is only evidence led by second party before the Court. It is the contention of second party firstly that, she was served a chargesheet dt. 15-4-95. She had denied the charges levelled against her. As per the evidence of Smt. Shinde, initially Mr. R.K. Thipse, then manager (D.P.) was the Enquiry officer. That enquiry was summarily quashed by than Sr. Divisional Manager Satara D.O on 19-6-95. She had produced page No. 7 of the enquiry proceeding dt. 15-4-95 at Annexure-C. If we perused the cross examination of Smt. Mangala Shinde, it can be seen that first party had not at all challenged this contention of second party. So, it is clear from the evidence of second party that initial enquiry based on chargesheet dt. 15-4-95 was quashed. Hence, I have answered Issue No. 1 in affirmative.

Second party has further contended that fresh enquiry was conducted by Enquiry Officer Mr. AH Kulkarni. Smt. Mangala Shinde deposed in her evidence that fresh Enquiry was ordered by appointing another Enquiry Officer MR.AH Kulkarni the then manager (accounts) Satara D.O. Second party further deposed that Enquiry Officer Mr. Kulkarni had submitted his report. That report is produced by second party at Annexure-F along with statement of claim. She had admitted the contents of that enquiry report. Even, at this point, there is no cross examination by advocate for first party. So also, in written statement first party had not denied specifically this contention of second party. So, it is admitted fact that fresh Enquiry was initiated against Smt. Shinde and Enquiry Officer Mr. Kulkarni had held that enquiry. Hence I have answered Issue No. 2 in affirmative.

7. It is further contention of second party that even though she was held as non guilty by the Enquiry Officer Mr. Kulkarni, a show cause notice dt. 1-8-95 was issued to her by the then Divisional Manager, Disciplinary Authority Mr. SK Khaphi proposing penalty of three stages down in the time scale of Assistant and recovery of Rs. 1518. To prove this contention, Smt. Shinde has deposed in her examin-in-chief that Enquiry Officer Smt. Kulkarni has held that charges levelled against her were not proved. So, she was not found guilty by the Enquiry Officer. She further deposed that even then Sr. Divisional Manager Mr. SK Khaphi had issued a show cause notice dt. 1-8-95 to her and he had proposed penalty of 3 stages down in the time scale and recovery of Rs. 1518. It is produced on record at Annexure G alongwith statement of claim. She had given reply to that show cause notice which is also produced at Annexure H. All this evidence of Mrs. Shinde remained unchallenged in cross-examination. So, it is admitted to first party that Mr. Kaphai had issued a show cause notice to Smt. Shinde and he proposed the penalty of reduction in 3 stages down in time scale and recovery of Rs. 1580. Even in the W.S. first party had not denied this contention of second party. As per the contention of first party, the disciplinary authority has powers to impose any of the penalties and may itself enquiry into such of the charges as are not admitted. It is further contended by first party in the W.S. that disciplinary authority has every right to decide the matter independently. It is further contended that while issuing the show cause notice dt. 1-8-95 the disciplinay authority has given the reason for differing with the findings of the Enquiry Officer and has also given the reasons for his decision. It is further contended by first party that the action of the disciplinary authority in differing with the Enquiry Officer is clearly within the rules and regulations. This contention of first party in para-7 of W.S. clearly shows that even though the findings of Enquiry Officer were different, disciplinary authority has issued a show cause notice to second party. So, it is clear that second party has proved its contention that even though there

was finding of non guilty by the Enquiry Officer, show cause notice dt. 1-8-95 was issued to her. Hence I have answered issue No. 3 in affirmative.

8. The defence of fisrt party is of two fold. Firstly, it is the contention of first party that Smt. Shinde was not member of the union. So union has no *locus standi*. Secondly, it is the defence of first party that the punishment of reduction in three stages imposed on Smt. Shinde is modified and it is not in existence. So, reference is not maintainable.

9. Smt. Shinde deposed in her examin-in-chief that she was member of the union. In cross-examn. Smt. Shinde deposed that she had not produced any documentary evidence to show that she was member of the union. In cross examination, Smt. Shinde deposed that she had not produced any documentary evidence to show that she was member of the union when she submitted her memorial or demand to the first party. She submitted that she can produce documentary evidence to show that her membership with the union was continued. Accordingly, second party has examined witness Eknath Prabhat. He has produced the receipt about the payment of subscription by Smt. Shinde. Those receipt are at Ex. 43. There is noting come in the cross examination to dis-believe the evidence of Mr. Prabhat. He had denied that they have fabricated the original receipts of Ex. 43 after the deposition of Smt. Shinde. So, the evidence of Smt. Shinde was corroborated by the evidence of Mr. Prabhat and documentary evidence of receipts at Ex. 43. So, it established that Smt. Shinde was member of the union. So, the defence of first party that Smt. Shinde was not membe of the union and hence union has no *locus standi*, cannot be accepted.

10. It is the contention of first party that memorial was filed to the chairman of LIC of Indian and chairman has modified the order and reduced the punishment to reduction of basic pay to one stage in time scale. In cross examination Smt. Shinde has admitted that she had given memorial to first party after 29-7-97. She had not produced copy of the order passed by the chairman about reducing her punishment of stoppage of one increment. She did not submit any application to Central Government for corrigendum about reduction of punishment. If we perused the evidence of Smt. Shinde, it is clear that she has clearly admitted that she had filed memorial. To the Cheirman of LIC of India. Chairman of LIC of India has modified the order. The copy of order is produced by second party subsequently which is at Ex. 38. If we persused this order of Chairman at Ex. 38 dt. 7-1-2000, it is clear that he has modified the earlier order of punishment and the penalty imposed on Smt. Shinde into one of the reduction in basic pay by one stage and the penalty of recovery of final loss of Rs. 1500. So, it is established by the first party that as per the order of Chairman of LIC of India the order of punishment of reduction of lower stage in time scale by 3 stages is modified to reduction in one stage. In the present

reference, as per the schedule, it is specifically mentioned that whether the action of the management in awarding the punishment of reduction of lower stage in the time scale of Assistance by 3 stages and recovery of Rs. 1500 from Smt. Shinde is legal and justified. It is clear from the evidence on record that action of management is not at all in existence. It is to be noted that the order is passed in the year 2000 and it was communicated to second party also. Since then, second party did not make any efforts to bring corrigendum and amendment to the schedule. So also no amendment was made to statement of claim by second party. It is settled position of law that this Court cannot go beyond the reference order. In the present case, the dispute referred is about action of punishment of reduction of earlier stage in the time scale by 3 stages and recovery of Rs. 1500 only. This action itself is not in existence. So this Court cannot go beyond the order of reference. Hence I come to the conclusion that taking into consideration all these facts and circumstances of the case this court has no jurisdiction to try and entertain present reference in view of modification of the order. Hence I have answered issue No. 4 in the negative.

11. As this Court has no jurisdiction to try and entertain present reference, the reference itself is not maintainable. Second party is not entitled for the declaration and refund of Rs. 1500 alongwith interest and back increments. Hence I have answered Issue No. 5,6 and 7 in negative and proceed to pass the following order.

ORDER

Reference is rejected.

Pune

Dt. 19-4-2007 Mrs. S.S. SAWANT, Presiding Officer

नई दिल्ली, 26 जून, 2007

का.आ. 1995.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 99/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-6-07 को प्राप्त हुआ था।

[सं. एल-12013/70/1998-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S.O. 1995.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 99/1999 of the Central Government Indus. Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 26-06-2007.

[No. L-12013/70/1998-IR(B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. I.D. 99/1999

The President, New Bank of India Empls. Union (NZ), Now PNB Empls. Union (NZ) C/o EG 810-A Mohalla Gobindgarh, Jalandhar Cantt. (Pb.) 144001

...Applicant

Versus

The Zonal Manager, Punjab National Bank, Zonal Office, Ferozegandhi Market, Ludhiana.

... Respondent

APPEARANCES

For the workman : Shri D.P. Tank.

For the management : Shri Lamber Chand

AWARD

Passed on 30-5-2007

Central Government vide notification No. L-12013/70/98/IR (B-II) dated 30-3-1999 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of the Bank I.E. Zonal Manager, Punjab National Bank, Ludhiana imposing penalty of stoppage of 6 increments to Sh. Balwinder Singh, Clerk/Cashier is legal and justified? If not, to what relief the concerned workman is entitled to and from what date?"

2. The case is taken up in Lok Adalat at the request of the parties. The authorized representative of the workman Shri D.P. Tank withdraws the present reference vide his statement recorded on 28-5-2007. In view of the same, the present reference is returned as withdrawn in Lok Adalat. Central Government be informed. File be consigned to record.

Chandigarh.

30-5-2007

RAJESH KUMAR, Presiding Officer

नई दिल्ली, 26 जून, 2007

का.आ. 1996.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 26/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-6-06 को प्राप्त हुआ था।

[सं. एल-12012/252/1999-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S. O. 1996.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 26/2001) of the Central Government Industrial Tribunal Kolkata as shown in the Annexure, in the Industrial Dispute between the management of United Bank of India and their workmen, received by the Central Government on 26-06-2007.

[No. L-12012/252/1999-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 26 of 2001

PARTIES : Employers in relation to the management of
United Bank of India

AND

Their workmen

PRESENT

Mr. Justice C. P. Mishra, Presiding Officer

APPEARANCES

On behalf of the Management : Mr. R.N. Majumder, Advocate with Mr. S. Pal, Advocate.

On behalf of the Workmen : Mr. A Sen, Advocate.

State : West Bengal Industry : Banking

Dated : 14th June, 2007

AWARD

By Order No. L-12012/252/99-IR (B-II) dated 30-08-2001 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of United Bank of India terminating the service of Shri Swapan Kumar Sarkar, Mini Deposit Scheme Agent w.e.f. 22-5-1998 is legal and justified ? If not, what relief is the disputant entitled to ?”

2. This reference has been made at the instance of one Swapan Kumar Sarkar stated to be a Mini Deposit Scheme Agent hereinafter to be referred as MDS for short. His case as it appears from his written statement in brief is that he was working as MDS agent in the United Bank of India (in short the Bank) at its Garfa Branch since 04-01-1993 and he was appointed as such by letter dated 05-12-1991 and an identity card was also issued to him on 04-01-1993 in this regard. The nature of job of a commission agent under MDS in a Bank is that money of depositors to

be collected by the said agent against coupon from door to door within the command area of the concerned branch of the bank and the money so collected to be deposited in the bank in the respective MDS accounts. For this work the said commission agent paid commission @ 3% of the total fresh deposits collected by him. The commission agent is also required to furnish a security deposit of Rs. 500 for the same. The workman, as per above conditions of service had been discharging his duties honestly and without any negligence. However, Shri Amal Kumar Dey, another commission agent of the said branch of the Bank with ulterior motive and malafide intention made a fraud with the Bank by defalcation and usurpation of the coupons allotted for this workman from the safe custody of the said branch. After preliminary enquiry the Bank found Shri Dey culprit for the same and he also admitted the same. The Bank accordingly initiated a criminal proceeding against said Amal Kumar Dey. The Bank also informed the MDS account holders that the agency of Shri Dey has been suspended and they were requested to refrain from depositing money through him. But, the concerned workman was in no way connected with the said incident and the Bank also never made any allegation against him in this regard. The Bank authority however debarred the concerned workman from working as commission agent for collection of deposits under MDS inspite of the fact that there was neither any allegation of defalcation nor any civil/criminal proceedings was initiated against him in this regard. The workman thereafter made representations to the Branch Manager, Garfa Branch of the Bank praying for resumption of his work as commission agent but the Bank Authority informed in writing about their inability to do anything in the matter. It is alleged that the Bank authority with malafide intention and with ulterior motive dismissed, discontinued and suspended the agency of this workman on 23-05-1998 without assigning any reason and without following the principles of natural justice and equity. The Bank authority discharged the agency of this workman on the fault and irregularities of another agent of the Bank and thus the workman has been penalized for the fault of other without reason and victimized.

3. The Bank has also filed a written statement denying the claims and contentions of the workman. It is stated that the alleged concerned workman is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and the relationship between the employer Bank and the alleged workman concerned was not that of master and servant. The contract that was made between the Bank and the alleged workman concerned was that of contract for service and not of contract of service. The alleged concerned workman made an application on 04-09-1992 to the Garfa Branch of the Bank for engagement as commission agent for collection of deposit under the MDS and in pursuance of such application, Garfa Branch of the Bank by a letter dated 03-12-1992 engaged him as a

commission agent on the terms and conditions as mentioned therein. Bank has quoted paragraphs 12, 13 and 14 of the said letter in this regard. It is stated that because of commission of fraud by another agent, namely, Amal Kumar Dey in respect of the MDS the said scheme was temporarily stopped by the Garfa Branch of the Bank and thereafter the Bank decided not to engage any further MDS agent in the said branch for the time being. Except denying that the alleged concerned workman is a workman within the meaning of Section 2(s) of the Act, the Bank admitted the statements of the workman in paragraphs 1, 2, 3 and 4 of his written statement regarding his appointment, remuneration and performance of duty as a commission agent under MDS of the Bank. It is also admitted that there was no allegation against the said Shri Sarkar in respect of his agency as the MDS. But it is pointed out that the same does not give any unfettered right to him for his continuance as such agent. The workman concerned having accepted the terms and condition to the effect that he was not an employee of the Bank in any sense and the relationship between him and the Bank will only be that of agent and principal, he is estopped from raising the industrial dispute. The Bank, however, has denied other allegations of the workmen. It is, therefore, urged that the concerned workman is not entitled to any relief.

4. Three witnesses have been examined on behalf of the workman in support of his case. WW-1 the concerned workman has stated that he received the appointment letter 05-12-1992 and started working as commission agent from 04-01-1993 and he was allowed to work in that capacity till 22-05-1998. He has also stated in details the nature of his duties, the remuneration paid to him for the same and the theft and misappropriation committed by one Amal Kumar Dey another MDS agent working in the said branch of the Bank. These facts have not been disputed by the Bank at all. In cross-examination the witness has admitted that in the appointment letter, Ext. W-1 various terms and conditions of his appointment have been written and he signed the duplicate copy of it accepting the said terms and conditions. He has also admitted that he was appointed as an agent following the business principle of the Bank and that the Bank on business principles may discontinue the said scheme. He has however clearly stated that he is a workman of the Bank.

WW-2. Sumit Kumar Ghosh is a shop-keeper. He has practically stated nothing in his deposition before this Tribunal. His evidence thus is of very little significance.

WW-3, Dhiraj Bose the Deputy Manager of the Bank and posted at Dosha Branch. He has stated in his evidence that the concerned workman who was an agent of the Bank is his neighbour. The relationship between the Bank and the agent is contractual and they get 2% commission of the total deposit collected in a month. He has clearly stated that the scheme under which the concerned workman was engaged in the Bank ceased to exist and therefore he was

terminated. In cross-examination the witness has stated that the MDS is no longer in force in the said branch of the Bank. According to him the Bank has not committed any mistake in the matter although the concerned workman is innocent. He has admitted that it is absolutely the Bank's prerogative whether a fixed term of contract should be renewed or not.

5. MW-1, Shyamal Dhali the Manager of Garfa Branch of the Bank is the sole witness for the management in this case. He has stated that as per clause 13 of the appointment letter of the concerned workman the Mini Deposit Commission Agent, Ext. M-1 his agency may be terminated at any time at the discretion of the Bank without giving any notice and without assigning any reason. He has also stated that the agency of the concerned workman was terminated in May, 1998 and thereafter no other person has been engaged as agent in respect of MDS and the Bank discontinued the said scheme in Garfa Branch. He has further stated that the concerned workman was never given the status of an employee of the Bank and no regular employee of the Bank discharges the functions as MDS Agent does and there is no post of MDS Agent in the Bank. In cross-examination the witness has stated that he was not posted as Manager at Garfa Branch of the Bank when the incident took place in the year 1998. He, however, admitted that there was no allegation against the concerned workman.

6. Few documents have been exhibited on behalf of the workman in this case. Ext. W-1 is the letter engaging the concerned workman as MDS commission agent which contains in details various terms and conditions of his engagement in the Bank. Ext. W-2 is a notice issued by the 24 Parganas(S) Regional Office of the Bank informing all the customers and patrons that due to irregularities in respect of issuance and collection of deposits by Shri Amal Kumar Dey MDS Agent of the Garfa Branch of the Bank has been suspended and they have been requested not to deposit money through the said person. Ext. W-2/1 is a printed letter of the same contents issued to one Shyama Pr. Adhikary a MDS Account holder by the Garfa Branch of the Bank. Ext. W-3 is a letter dated 17-07-1998 in Bengali addressed to the Manager of the Garfa Branch of the Bank requesting for payment of his due commission and also for allowing him to work there. On the other hand, the management has exhibited certain documents in support of its case. Ext. M-1 is the letter of engagement of the concerned workman as MDS commission agent which has already been marked Ext. W-1. So also Ext. M-2 which has already been marked as Ext. W-3. Ext. M-3 is another letter of the concerned workman addressed to the Branch Manager of the Garfa Branch of the Bank requesting for continuance of his MDS agency. Ext. M-4 is a letter dated 24-09-1998 of the Garfa Branch of the Bank to the Officer Incharge of Kasba P.S. in respect of defalcation/cheating committed by the said Shri Amal Kumar Dey. Exts. M-5,

M-6 and M-7 are the three internal letters of the Garfa Branch of the Bank addressed to the higher authorities of the Bank.

7. On the perusal of the aforesaid evidence led by the parties in this case, it is evident that the workman admittedly had been working as a Commission Agent in the Bank and for this work he used to get commission @ 3% of the total fresh deposit. According to him he has been deprived on account of the conduct of some other Agent, Amal Kumar Dey without any fault of his own with a malafide intention. The management, however, has denied this fact to be so and according to them as per terms of appointment, Ext. W-1= M-1 the workman had no legal right to claim any such right to employment as an employee of the Bank. His terms of appointment as per Ext. W-1 itself made it clear in paragraph 12 that the concerned workman was not an employee of the Bank in any sense. The relationship between the Bank and him is that of principal and agent. The service conditions relating to the employees of the Bank was in no way applicable to him and further that he was not entitled to any salary, Provident Fund or any other benefit ordinarily allowed to the staff of the Bank under its service conditions and rules. In paragraph 13 of the terms of employment it is clearly provided that agency of the workman concerned could be terminated at any time at the discretion of the Bank without giving any notice or without assigning any reason for the same. The concerned workman had to give his acceptance on the above terms and conditions of the agency and as such it was the basis of his claim whatsoever had been to work as Commission Agent. The statement given by MW-1, Shyamal Dhali also goes to show that it was a case of simple termination of the agency in May, 1998 and thereafter no other person has been engaged as agent in respect of MDS and the Bank had discontinued the said scheme. He has also denied that the workman had ever been given the status of an employee of the Bank and further that there is no post of MDS Agent in the Bank so as to be given to this concerned workman as per terms of contract in this regard. He has also denied any allegation of personal biasness against him or that the action was taken against the workman on account of conduct of some other person.

8. The aforesaid facts as such clearly go to show that the workman has got neither any legal right under the terms of contract, Ext. W-1 to challenge his termination as Agent of MDS nor he is entitled to get any relief as he was working just as an agent for which he is entitled to only commission for the amount of deposits so collected by him on behalf of the Bank in the aforesaid scheme for which the Bank had issued coupons and he could have continued his work till the said authority is available to him in this regard. Since the Bank had already terminated his service in terms of paragraph 13 of contract, Ext. W-1 which was also accepted by the workman, he is not entitled to any relief whatsoever for his reinstatement in service. However,

the alleged security deposit made by the concerned workman which according to him has not been refunded to him should be refunded by the Bank as there has been no amount due from him as per statement of MW-1.

9. In such view of the matter the action of the management of the Bank in terminating the service of Shri Swapan Kumar Sarkar, MDS Agent w.e.f. 22-05-1998 cannot be said to be illegal and unjustified. He is not entitled to any relief.

C. P. MISHRA, Presiding Officer

Dated, Kolkata,

The 14th June, 2007

नई दिल्ली, 26 जून, 2007

का.आ. 1997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय नं.-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 25/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-6-07 को प्राप्त हुआ था।

[सं. एल-12012/544/86-डी-II(ए)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S. O. 1997.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 26-6-2007.

[No. L-12012/544/86-D-II(A)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI RAJESH KUMAR, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. I.D. 25/2005

Shri Ashwani Kumar,
Manav Kalyan Indl Workers Union,
Partap Nagar,
Amritsar (Pb.)

...Applicant

Versus

The Assistant General Manager,
Canara Bank, Disciplinary Action Cell,
DDA Building, Nehru Place.
New Delhi-110019

...Respondent

APPEARANCES

For the Workman : Shri R.S. Longia, Advocate
 For the Management : Shri Ashok Jagga,
 Advocate

AWARD

Passed on 24-4-07

Central Govt. vide notification No. L-12012/544/86-D-II(A) dated 1-9-1987 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Canara Bank in terminating the services of Shri Ashwani Kumar son of Shri Puran Chand, peon at their branch at Gurdaspur w.e.f. 10-8-1985 is justified? If not, to what relief the concerned workman is entitled?"

2. Workman is claim statement averred that he was employed as peon in Gurdaspur Branch of Canara bank since 14-4-82 having sponsored through employment exchange against sanctioned post and continuously remained in employment till 10-8-85 when his services were discontinued orally. No retrenchment compensation, notice pay was paid or offered prior to 10-8-85 and junior to the workman Shri Som Raj who was appointed on 20-3-1985 was retained. The post was a sanctioned post and juniors new persons were employed. That vide letter dated 10-5-85 the Manager, Gurdaspur Branch wrote to the Staff Section(W) Delhi Circle Office. The workman has worked for more than 240 days prior to his discontinuation and the particulars of days worked is at page 7 of the list of the documents wherein he has shown that he worked for 255 days but without any reference to any document but from his own memory.

3. The management filed written statement raising preliminary objection first submitting that workman was not appointed on a sanctioned post. It was pleaded that the workman had actually worked up to 6-2-1986 and not upto 10-8-85 which is an earlier date as alleged in the statement of claim. In the calendar year prior to 6-2-86 the workman had worked only for 169 days as per detail given at page 2 of the written statement and there is no grievance U/S 25B read with Section 25F of the I.D. Act therefore, was no question of payment of retrenchment compensation. Workman was working on daily wage basis for about four months and since the workman never reported for duty, he was not awarded work and for this reason, the workman has never raised any grievance or industrial dispute. It was further pleaded that management never refuse him work as a daily wager and the days on which he did not work were either there was no work for a daily wager or if there was some work, the workman did not report for duty and has no cause of action and workman admittedly failed to disclose. It was also denied in the written statement that workman was engaged as a peon. He was engaged only on daily wage basis and not against any sanctioned post, rather he was appointed on daily wager

basis. The management has denied all these allegation before the Conciliation Officer and the workman own admission about being provided with work on specified days falsify his stand. He before the Conciliation Officer had specifically expressed that he was not agreeable for listing his name in the penal and thereby he is not in a position to raise any grievance for not providing him with work.

4. That against this written statement of the bank, workman filed rejoinder in which he raised new questions which he never raised in the claim statement. He further alleged that there was not a question of non-completion of 240 days service by the workman in a calendar year. He also denied the ground of abandonment of the job by the workman as alleged by the management.

5. On completion of pleadings by the parties, parties led evidence. On behalf of the workman only workman himself filed his affidavit and appeared his own witness. Management also examined as bank witness one Shri P.K. Kohli, Manager Canara Bank. Thereafter final arguments heard as advanced by both the counsel of the parties. Both parties also preferred to file written arguments.

6. Learned counsel for the workman in written arguments as well as in oral arguments submitted that workman has proved that he was in continuous service for more than 240 days till 10-8-85 the date of his retrenchment under challenge. The management can not compel the workman to challenge his subsequent termination even after workman had got cause of action from which he was aggrieved off. So far the question of completion of 240 days by the workman is concerned, that has not been disputed by the management. As per the well settled law in the case Hari Palace Cinema Ambala 1979 PLR 720 Supreme Court that once the retrenchment is found to be illegal in violation to the provisions of Section 25F, the workman is entitled to an award of reinstatement with full back wages in the absence of any plea and proof of gainful employment of the workman. It is not disputed that the workman joined into service of the management from 14-4-1982 to 10-8-1985. MWI admitted in his cross-examination that one Som Raj who worked from 20-3-85 to 14-10-1988 was junior to the workman who worked from 20-3-1985 to 14-10-1988 and was retained in to service on 10-8-1986. The management has not produced any document on record showing his terms of appointment and term of appointment of the workman to support the version of the MW that his term was not extended. The management also did not produce the service record of the said Som Raj despite repeated adjournments and directions for that purpose. Therefore an adverse inference has to be drawn against the management that what ever has been stated by the MW was not only contrary to the reply to the statement of claim but also contrary to the service record of both the employees. The MW therefore, made a false statement of non-maintenance of record of service of daily wager. The

fact is that the bank maintain the record of each and every thing but deliberately kept withholding the same. The management in his case has tried to make out a point in the cross-examination of the workman that the workman was retrenched for non-availability of work and the breaks if any were on account of non availability of work. But when tested at the touch stone of mandate of Section 25B of the Act, the question posed goes in favour of the workman. Therefore, termination by giving artificial notional breaks after completion of 240 days service of the workman was an illegal retrenchment. Therefore, termination of the workman on 10-8-85 is not justified and workman is entitled for reinstatement with full back wages as he was not gainfully employed during this period after his termination until now.

7. On the other hand learned counsel for the bank opposed vehemently the claim of the workman. Learned counsel for the bank submitted that workman worked not up to 10-8-85 but upto 6-2-1986 i.e. from 1-1986 to 6-2-1986 on daily wages for four months upto 1-1-1986 w.e.f. 10-8-86 workman did not come to work and never raised any dispute. He was engaged lastly on 6-2-1986 and initiated these proceedings on 11-2-1986 by serving a notice on the bank and bank never refused to work and even before the ALC(C). The workman was working on the sanctioned post whereas as per documents relied by the workman Ex. W5, W6 and W8 and W11 and W12 that he was on daily wages. It is further averred by the bank that workman has admitted the case of the bank and side tracked the pleadings of the bank saying that workman has a right to raise dispute on his first disengagement on reinstated of workman dispute goes workman is silent on his point. Workman has demanded relief on his first disengagement and he can do so. He did not work continuously as per his affidavit because Ex. W12 documents prepared by the workman out of his own memory contradicted the stand. He was not awarded work for the month as he absented the work and did not come to work. He was not engaged but he did not raise any dispute. He was engaged upto 6-2-1986 against workman and he raised the dispute on 11-2-1986 by serving notice after five days.

8. In view of the above submissions he submitted that workman was not a permanent employee. He was a daily wager workers and as per Ex. W12 the document prepared by the workman himself out of his memory, he worked for 31 days in July 1985 and that only dispute is left the workman to bring his case within the ambit of Section 25F, he is ignoring his further engagement, joining the bank on 6-2-1986 and relying only on his termination four months back, when he himself left the job and abandoned the work himself. So the workman has no case as he himself abandoned the work. Further burden of proof was upon the workman and he failed to prove by any document that he worked for more than 240 days preceding his disengagement on 6-2-1986 and illegally calculating by self made out of his memory document Ex. W12 that he

worked for 255 days. On his filing the application to produce document pertaining to his employment and employment of one Som Raj, the bank produced the record but the workman never tried to take help and prove this record for the reasons best known nor he asked the bank to file this record in the Court. So in view of the above submissions learned counsel of the bank submitted that bank has proved his case and termination of the workman is not on 10-8-85 but on 6-2-1986 is justified. There is no date of disengagement of workman and workman Ashwani Kumar himself given this date i.e. 10-8-85 and workman failed to prove that his termination was on 10-8-85 rather he absented his work for four months and not come so on work was given to him and later he came and given the work. Further burden to prove was on him. He never proved from the documents of the bank brought by the bank nor by his own documents except his oral assertions. There is no question that action of the management is not justified because management has not taken any action on that date. The claim of the workman is misconceived and reference may be answered in favour of the bank accordingly.

9. In view of the above submissions of both the parties and my perusal of the documents and oral evidence, I found that workman has produced documents Ex. W2 to W12. The documents Ex. W11 and W12 are the documents of working days. The management produced the documents required by the workman as per his application, which was allowed, but he never tried to refer to the bank documents in this regard. The workman has based his case asserting that he was appointed on 28-9-84 and worked up to 10-8-1985 and he completed 255 days of service. On the other hand, the plea of the bank is that the workman was not disengaged on 10-8-1985 and he worked from 7-2-1985 to 6-2-1986 intermittently as per the documents. Workman nowhere denies that he did not work upto 6-2-86 specifically. The documents relied by the workman Ex. W12 also shows breaks of more than one month in July 1985 and four days break to 10-8-1985. Therefore, the workman did not work for more than 240 days. He worked for total days as pleaded in written statement and affidavit only for 169 days preceding to his disengagement. I have found that it is a settled law that burden of proving that workman completed more than 240 days is on workman himself and workman has examined himself as only witnesses and despite the court passed the orders of production of record of the workman and Som Raj, as prayed by the workman in his application. In this manner it can not be said that management refused to produce the documents and to show to the workman as he never demanded the same nor shown his willingness to refer them in court. From the above evidence on the record and documents Ex. W2 to W12, it proved that workman was appointed on daily wages from employment exchange and that he worked intermittently even as per the documents Ex. W11 and W12

relied by the workman himself, for more than 31 days i.e. one month in July 1985 and further four months after 10-8-1985 as proved by the management he did not come to work, so work was not given to him and during this period, the workman did not come and that is why he could not work for more than 240 days.

10. As regard the plea of the management that after 10-8-1985 workman came and further worked with the management bank disproves his all claims and demand. Even his demand was satisfied and he was re-employed reinstatement claim of workman on his later joining, of his own goes as waived. Even his action of serving notice on Bank is a mischief that he served notice on the bank after joining the bank. Workman has waived his earlier action against the bank of termination alleged dated 10-8-1985 and no cause of action further arose or remain to him.

11. Therefore, I am of the considered view that the workman also worked with the bank after 10-8-1985 the alleged date of termination, as per workman, where as the contention of Bank is different, Bank has taken a plea throughout that workman was not terminated on 10-8-85 by Bank but on 6-2-86. Bank has proved that his services were not terminated on 10-8-85 but disengaged on 6-2-1986 when there is no termination as alleged by workman, so there is no question that termination was illegal on 10-8-85. Action of the Canara Bank in terminating the services of the workman Ashwani Kumar son of Puran Chand Peon at their branch at Gurdaspur w.e.f. 10-8-1985 cannot be said illegal or unjustified. Therefore, workman is not entitled to any relief what so ever. The reference is answered accordingly. Central Govt. be informed. File be consigned to record

Chandigarh RAJESH KUMAR, Presiding Officer
24-4-2007

नई दिल्ली, 26 जून, 2007

का. आ. 1998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब सिटीफेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के हीन, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्रन्थ न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 15/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-6-2007 को प्राप्त हुआ था।

[सं. एल-12011/218/2001-आई.आर. (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S.O. 1998.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and

their workmen, received by the Central Government on 26-6-2007.

[No. L-12011/218/2001-IR(B-II)]

RAJINDER KUMAR, Desk Officer
ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR, COURT,
LUCKNOW
PRESENT
Shrikant Shukla, Presiding Officer
I.D. No. 15/2002

Ref. No. L-12011/218/2001-IR (B-II) Dt. 11-3-2002

BETWEEN

The State Secretary,
Syndicate Bank Emps. Union,
U.P. State Committee,
211, Vinay Palace, Ashok Marg,
Lucknow (U.P.)-226001

And

Syndicate Bank,
The Dy. Gen. Manager, SB
Zonal Office, Meerut Wing,
Bhawanipuram University Road,
Meerut (U.P.)-250001

AWARD

The Government of India, Ministry of Labour, New Delhi referred the following dispute No. L-12011/218/2001-IR (B-II) Dt. 11-3-2002 for adjudication to the presiding Officer, CGIT-cum-Labour Court, Lucknow:

"Whether the action of Syndicate Bank Management in imposing the punishment of removal from service on Sri Vijay Kumar attender vide order Dt. 18-3-2000 is just fair and legal? If not, what relief he is entitled to?"

Admitted fact of the case is that Vijay Kumar was employed as Attendar in Syndicate Bank (hereinafter referred as bank) and was posted at Meerut Cantt. branch of the bank. In this bank peon was called Attender. Sri Vijay Kumar shall hereinafter be referred as workman. Workman was placed under suspension vide order dt. 21-12-98 which is reproduced below;

ZOL/IRC/SUS/W/02/98

Date : December 21, 1998

Sri Vijay
Emp. No 478337
Attendar,
Meerut Cantonment Branch

Dear Sir,

Suspension Order

During the investigation of our Meerut Cantt. branch matters, it has been noticed that you have been indulging in certain activities seriously subversive of discipline, while

working as Attender at our Meerut Cantonment Branch. Whereas it is contemplated to initiate disciplinary action against you under the provisions of Bipartite Settlement. Before pending initiation of such inquiry, you are placed under suspension with immediate effect under clause No. 19.12 (b) of Bipartite settlement.

During the period of suspension you will be paid subsistence allowance, as mentioned below and as provided in the Bipartite settlement.

- For the first three months, 1/3 (one third) of the pay and allowance which you would have got but for suspension;

- Therefore 1/2 (one half) of the pay and allowances which you would have got but for suspension;

- After one year full pay and allowances, if the enquiry is not delayed for the reasons attributed to you or any of your representative.

During the period of suspension, you should not enter the branch/office premises, except for the purpose of operating your account. For that purpose, you should obtain the specific permission of the Manager by sending him a note through an Attender or Watchman/Armed Guard of the branch/office. Such banking operations will be allowed only in the Manager's cabin. If it is found that you are misusing this facility in any way, your account is liable to be closed and balance will be sent to you by a pay order.

Further you should inform the bank, in writing, your address for mailing future correspondence. You should not leave the Head Quarter during the period of suspension without the written permission of the undersigned.

Yours Faithfully

Sd/-

Asstt. General Manager

Subsequent to suspension, the workman was served with the charge sheet dt. 1-2-99 by Asstt. General Manager, Zonal Manager, Lucknow the contents of the charge sheet are reproduced below :

ZOL/IRC/CGS (W) 03/99

February, 1999

Sri Vijay
Emp. No. 478337
Attender
Meerut Cantt. Branch

Dear Sir,

Charge Sheet

That you were working as an Attender in our Meerut Cantt. branch since 29-8-95 until you were placed under suspension vide proceeding No. ZOL/IRC/SUS/W/02/08 dt. 21-12-98. While you were working as such, you indulged in activities which are highly indecent and seriously subversive of discipline.

Following circumstances appear against you,

That on 30/1-12-1998, some unknown burglars broke open the strong room our Meerut Cantt. branch and burgled Rs. 7,30,000 (Seven Lacs Thirty Thousands only) and also murdered Sri Banwari Lal, Security Guard.

That in the course of Police investigation it was found that in a room behind the bank premises, you alongwith Sri Komal Singh, Clerk, Meerut Cantt. branch, Sri Manoj, Water Boy, Late Sri Banwari Lal, Security Guard, Sri Raj Kumar S/o Sri Banwari Lal (brother of late Banwari Lal, Security Guard) and another person known as Photographer used to assemble after office hours as well as on holidays and on Sundays for drinking liquor and indulging womanizing etc.

That during the police interrogation you alongwith other admitted your participation in such activities.

Your have thus indulged in highly indecent behaviour on the premises of the bank and such action on your part, besides being seriously subversive of discipline has also tarnished and seriously impaired the image of bank in the eyes of public.

Hence we charge you with

(1) Committing "gross misconduct of incident behaviour on the premises of the bank vide clause No. 19.5(c) of the Bipartite settlement."

and

(2) Committing "gross misconduct of doing acts prejudicial to the interest of the bank vide Clause No. 19.5(3) of the Bipartite settlement".

You are required to submit your explanation within 7 days from the date of receipt of this charge sheet failing which the matter will be proceeded with further.

You shall continue to be under suspension under clause No. 19.12 (b) of Bipartite settlement.

Yours faithfully,

Sd/-

(B. R. Pai)
Asstt. General Manager

The workman replied to the charge sheet is letter dated 22-3-99 the same is reproduced below ;

सेवा में,

दिनांक 22-3-99

श्रीमान सहायक महाप्रबन्धक,
सिंडिकेट बैंक,
आंचलिक कार्यालय,
लखनऊ

प्रिय महोदय,

आपके पत्र सं. आंकाल/औसंक/कामगार/3/99 दिनांक 1-2-99
के सन्दर्भ में आपको सूचित करना चाहता हूं कि :

1. मेरे ऊपर लगाये गये आरोप निराधार, असत्य एवं मनगढ़त है अतः मैं इनसे इनकार करता हूँ।

2. पुलिस द्वारा पूछताछ के दौरान मेरे साथ काफी मारपीट की गई और मुझ पर थर्ड डिग्री इस्तेमाल की गई। इसी दबाव में पुलिस द्वारा मेरे से किसी कागज पर हस्ताक्षर भी करा लिये थे जिसका मैंने पूरा विरोध किया था और तभी अपने संगठन को इस बारे में सूचित किया था। बाद में पुलिस ने मुझसे गहन पूछताछ करने और पूरी तरह निर्दिष्ट पाये जाने के कारण छोड़ दिया।

मान्यवर, मैं 13 वर्षों से बैंक की सेवा में कार्यरत हूँ और अपना काम पूरी मेहनत, लगन और ईमानदारी से करता रहा हूँ। मैं शादी शुदा बाल बच्चेदार आदमी हूँ और मेरा इस प्रकार के अशोभनीय आचरण से कोई लेना देना नहीं है।

अतः आपसे प्रार्थना है कि मेरा निलम्बन निरस्त करने और मुझ पर लगाये गये आरोपों से बरी करने की कृपा करें।

आपकी अति कृपा होगी।

प्राथमि

(विजय)

क्रम संख्या : 478337

परिचर

मेरठ कैन्ट शाखा

The departmental enquiry was conducted and the enquiry officer submitted his findings on 9-10-99 and the findings of the enquiry officer was send to the workman for inviting comments of the workman over the findings of the enquiry officer. The workman made his submission through his defence representative on 30-11-99. Whereafter Asstt. General Manager issue show cause notice dt. 17-12-99 proposing the punishment of removal from service of the bank with immediate effect. Asstt. General Manager also granted personal hearing which took place on 24-1-2000. Asstt. General Manager of the bank whereafter passed the punishment order on 18-3-2000 which is reproduced below;

SYNDICATE BANK
INDUSTRIAL RELATIONS CELL
ZONAL OFFICE, LUCKNOW

ZOL/AGMS/PRS(W)/17/2000 March 18, 2000

Proceedings of the Asstt. General Manager,
Syndicate Bank, Zonal Office Lucknow in the matter Charge
Sheet No. ZOL/IRC/CGS (W)/3/99 dated 1-2-99 Served on
Sri Vijay EMP. No. 478337 Attender U/s Meerut Cantt.
Branch.

Whereas, I am the Disciplinary authority in the instant case at present and all the connected papers of the case are placed before me.

I observe from the records that Sri Vijay was placed under suspension and issued with the chargesheet bearing

no. ZOL/IRC/CGS(W)/3/99 dt. 1-2-99 for the reason that while he was working as an attendant at our Meerut Cantt. branch since 29-8-95 until he was placed under suspension vide proceedings no. ZOL/IRC/SUS/W/02/98 dt. 21-12-98 and while he was working as such, he indulged in activities which were highly indecent and seriously subversive of discipline. Following circumstances appeared against him.

On 30/1-12-98 some unknown burglars broke open the strong room of our Meerut Cantt. Branch and burgled Rs. 7,30,000 (Rs. seven lacs thirty thousands only) and also murdered Sri Banwari Lal, Security Guard.

In the course of police investigation it was found that in a room behind the bank premises, he alongwith, Sri Komal Singh, Clerk, Meerut Cantt. branch, Sri Manoj water boy, late Sri Banwari Lal, Security guard, Sri Raj Kumar (fried of late Sri Banwari Lal, Security guard) and another person known as photographer used to assemble after office hours as well as on holidays and on Sundays for drinking liquor and indulging in womanizing etc.

That during the police interrogation he alongwith others admitted his participation in such activities. He has thus indulged in highly indecent behaviour on the premises of the bank and such action on his part besides being seriously subversive of discipline has also tarnished and seriously impaired the image of the bank in the eyes of public. He was therefore charged with (i) committing "Gross Misconduct" of indecent behaviour on the premises of the bank vide clause No.19.5 (C) of the Bipartite settlement and (ii) committing gross misconduct of indecent behaviour on the premises of the bank vide clause No. 19.5(C) of the Bipartite settlement and (ii) committing gross misconduct of doing acts prejudicial to the interest of the bank vide clause no. 19.5 (j) of BPS.

I observe from the records that CSE submitted his reply to the charge sheet vide his letter dt. 22-3-99 wherein he denied the charges levelled against him and therefore the matter was proceeded with further by holding departmental enquiry. Sri R.K. Garg, Chief Officer IR Cell ZO Lucknow was appointed as Enquiry Officer to hold the enquiry. In the enquiry the CSE was defended by Sri Anil Kumar Srivastava, State Secretary, SBEU, UP State Committee.

The enquiry officer has held the enquiry on 1-6-99, 5-8-99, 6-8-99 and 1-9-99 and thereafter submitted his report dt. 9-10-99 wherein he held the CSE guilty of the charges levelled against him.

I further observe that the report of the enquiry officer was sent to Sri Vijay vide letter no. ZOL/IRC/CGS(W)/3/99/ 1409 dt. 20-10-99 for his submission on the same. I note that CSE through his DR vide his letter dt. 30-11-99 has submitted that he was not involve in the any manner in respect of the burglary of Rs. 7,30,000 and murder of the sucuity guard at Meerut Cantt. branch on 30.11/1-12-98 and the same was also admitted by the EO in his findings;

that the management could not give any oral or documentary proof to substantiate the deposition of MW-1 and MW-2 and the same has also been admitted by the EO in his findings; that it has come on record orally as well as through documentary evidence (Dex-1) that CSE neither confessed nor give any admission/confession letter either to the bank or to the police authorities; that it had also come on record that the management could not produce any documentary or oral evidence to substantiate the charge that the CSE and others were assembling in a room behind the branch premises to consume liquor or for womanizing activities; and that the EO due to his predetermined approach and with closed mind tried to prove the charges.

After carefully examining the proceeding of the enquiry and enquiry officer's report I observe that above submissions of the CSE are not tenable. I find that the management has produced sufficient evidence to sustain the charges of gross misconduct of "indecent behaviour on the premises of the bank vide clause no. 19.5(C) of BPS and doing acts prejudicial to the interest of the bank" vide clause no. 19.5(j) of BPS levelled against the CSE.

I have carefully gone through the enquiry proceedings and the EO's report. I find that evidence adduced by the management is incontrovertible and credible and has not been dislodged by the defence. The enquiry officer has properly analysed the evidence and has given cogent and logical reasons in arriving at his conclusions and findings. I therefore do not find any reason or circumstances which support the claim of the employee made in his submission dt. 30-11-99. The EO has arrived at his findings of guilt on the basis of averments made by the witnesses in the enquiry and I agree with the EO regarding the guilt of the CSE. Considering the seriousness of the misconduct I had proposed the punishment of "Removal from the services of the bank with immediate effect without disqualification for future employment" to Sri Vijay vide show cause notice no. ZOL/IRC/CGS(W)/03/1707 dt. 17-12-99. The CSE was also advised to appear before me for the personal hearing on 10-1-2000 which was rescheduled to 24-1-2000 vide my letter ref. no. ZOL/IRC/CGS(W)/3/99/1779 dated 28-12-99 at the request of the CSE/ Defence representative. The CSE alongwith his DR appeared in person and made a verbal submissions that the chargesheet issued is based solely on the police investigation and the police have admitted that they have no evidence to try the matter through court, that the same has also come record during the course of departmental enquiry, that during the course of departmental enquiry and as per the findings of the EO the CSE was not found involved in the burglary incident at Meerut Cantt. branch; that the police investigating officer (MW-1) could not adduce any supporting evidence or documents to substantiate the contents of MEX-1; that submissions dt. 30-11-99 on the EO's report is not given due consideration

by the D.A. and to reconsider the same; that MW-2 vide his letter no. MCT/8569/SFF/MK dt. 3-8-99 addressed to DGM ZO, IRC, has confirmed in black and white that no admission/confession has been given by the CSE to the police and the same has also came on record on page no. 5 last para of the enquiry report and that DEX-1 and evidence of MW-1 confirms that no confession/admission was made by CSE, whereas the chargesheet is solely based on the admission by the CSE.

I have carefully examined the whole proceedings and other related records of the case. I find that the enquiry is held as per the provisions of the BP applicable to the CSE as to the Disciplinary proceedings and I am satisfied that ample time and every opportunity at all the stages have been extended to Sri Vijay to defend his case in the enquiry in consonance with the principles of natural justice.

I have also gone through the evidence and observe that there is overwhelming evidence in support of the charges and EO has gone by the evidence adduced in the enquiry. The EO has drawn his conclusion based on the evidence and the facts that have emerged in the enquiry and has elaborately discussed the evidence in arriving at his findings.

Thus I observe that he has held CSE guilty of the charges levelled against him on the basis of evidence and I concur with and accept the findings of the EO and hold Sri Vijay guilty of the charges.

The charges levelled and proved against Sri Vijay are serious in nature and constitute gross misconduct within the meaning of clause no. 19.5(c) and 19.5(j) of the BPS. For financial institutions its image is of paramount importance and anything done to impair its image has disastrous and far reaching consequences. The action of employees who indulge in activities of the nature discussed above should be viewed seriously.

Hence I consider the gravity of the misconduct in the instant case is of serious nature, and that the same has affected the image of the bank adversely. Further I have considered the past records of the employee and submissions of DR. I do not find any extenuating circumstances to consider awarding him a lesser punishment. Therefore, taking into consideration the gravity of the charges proved against him and all the aspect of the case I pass the following;

ORDER

(i) for committing Gross misconduct of indecent behaviour on the premises of the bank vide clause no. 19.5(C) the Bipartite settlement.

"Sri Vijay be and is hereby removed from the service of the bank with immediate effect and with out disqualification for future employment".

and

(ii) for committing gross misconduct of "doing acts prejudicial to the interest of the bank vide clause no. 19.5(j) of BPS "Sri Vijay be and is hereby removed from the service of the bank with immediate effect and without disqualification for future employment." Further his period of suspension will not be treated as on duty and he is not eligible for any back wages etc. except for the subsistence allowance already paid to him.

Sr. Vijay, if he so desires may prefer an appeal against the above order to the Appellate authority i.e. General Manager (p), Syndicate Bank, HQ; Manipal within 45 days from the date of receipt of this order.

Sd/-

(B.R. PAI)

Asstt. General Manager

Aggrieved from the punishment order the worker submitted appeal to the General Manager after granting personal hearing rejected the appeal. Aggrieved from the order workman approached to Asstt. Labour Commissioner (C) through union

The worker's case is that charge sheet has not been issued by the disciplinary authority exercising his own independent mind, instead it has been issued at the behest of the police authorities. It is also alleged that charge sheet is vague and not specific as it does not contain specific date of consuming the liquor and womanizing in the premises of the bank. Charge sheet is alleged to be further vague because no letter of admission of the workman as alleged was enclosed with the charge sheet. The same was not produced during the course of enquiry. It is also alleged that findings of the enquiry officer is perverse and based on evidence. Even it is assumed though not admitted that charges framed against the workman were proved, extreme penalty of removal from service is highly disproportionate and deserves to be set aside. It has therefore been prayed by the trade union that imposing of the punishment of removal from service of Sri Vijay vide order dated 18-3-2000 may be held as unfair and illegal. Trade union has argued for relief that worker may be reinstated with full back wages.

The opposite party bank has filed the written statement. It has been submitted that worker who was employed in the bank was removed from service without disqualification of future employment. It is submitted that on 30-12-98 some unknown burglars broke open the strong room of Meerut cantt. branch of syndicate bank and burgled Rs. 7,30,000/- cash from the strong room of the branch and also murdered security guard Sri Banwari Lal and in this connection a police complaint/FIR dt. 1-12-98 was lodged by the bank through its branch manager of Meerut cantt. branch. During the course of police investigation it was established that in a room behind the bank premises Sri Vijay alongwith Sri Komal Singh, Clerk, Meerut cantt branch and Sri Manoj and late Sri Banwari Lal (security

guard) Sri Raj Kuamr and another person known as photographer used to assemble after office hours as well as on holidays and on Sundays for drinking liquor and also indulge in other immoral acts such as womanizing etc. During the course of investigation it was also established that Sri Vijay was engaged in immoral acts Sri Vijay along with others were also present on the night of 30-11-98 (the day of incidence) as confirmed by one Sri Manoj Kumar, the water boy. After issuance of charge sheet enquiry was held. The disciplinary authority after carefully going through the records of the case including enquiry report found that the enquiry was held as per the provisions of the Bipartite settlement and also in accordance with the principles of natural justice. All fair and reasonable opportunity was afforded to Sri Vijay to defend his case and the disciplinary authority finally proposed to award the punishments of the Removal from the service of the bank with immediate effect without disqualification for future employment for each of the charges. Submissions of Vijay Kumar was not found satisfactory and taking into consideration various aspects of the case and the gravity of the misconducts of serious nature levelled against Vijay Kumar. The disciplinary authority passed the order of removal from service of the bank. Sri Vijay preferred an appeal and after giving opportunity of the personal hearing the Appellate authority confirmed the order, as there were sufficient evidence on record to sustain the charges for which Sri Vijay was held guilty and the Appellate authority did not find any merit in various other submissions made by the defence representative on behalf of Sri Vijay. Because of the highly indecent behaviour and acts of moral turpitude of Sri Vijay the bank has lost confidence in Sri Vijay and Sri Vijay is not fit person to be kept in the service of the bank and as such is not liable to be reinstated in the service of the bank. It is further submitted that the charge sheet can never be stated as take and not specific because subsequent to the burglary and murder of Sri Banwari Lal the security guard the police enquiry and investigation was conducted and during that investigation, it was found that Sri Vijay alongwith others were involved in certain immoral acts like consumption of liquor, womanizing etc. and they were also present on the day of the incident. The bank proceeded against Sri Vijay after the report was submitted by the police authorities and during the course of police investigation Sri Vijay alongwith the others admitted their participation in such activities.

Previous dates or occasions when Sri Vijay and others were involved in womanizing or consumption of liquor, is unwarranted because the specific dates are not to be cited for the reason that Sri Vijay himself admitted his participation in such immoral activities from time to time. It has further been submitted that management witness MW-1 who was a police official, in his report has clearly stated that he recorded the statement of Sri Vijay wherein he has admitted his involvement in the said acts along with

Sri Komal Singh. The statement of confession was recorded by MW1 (Police Officer) and further in the presence of MW2 (Branch Manager) of Meerut Cantt. branch where Sri Vijay confessed about his involvement in the immoral acts along with others. The said police official who had conducted the investigation was also produced as management witness and the entire opportunity was given to the charge sheeted employee and his defence representative to cross examine the said witness. The illegal act of Sri Vijay was also established by the statement of the water boy Sri Manoj in the Police Station. The water boy revealed the name of Sri Vijay along with others which was even confirmed by the lady Smt. Prem Alias Neelam W/o late Sri Zaheer Ahmad in the Lal Kurti Police Station. The said lady confirmed the name of these persons who were involved in acts of womanizing on the date of the incident also. Page 13 of the enquiry proceedings clearly established that Sri Vijay was present during the date of incident and the relevant which clearly established in the immoral acts of Sri Vijay is reproduced as under :

"We sent to the branch and collected Vijay and reached the Lal Kurti Police Station. I had again requested to accompany my staff. When we reached the Lal Kurti Police Station, we found a woman seated on the ground near a chair occupied by Sri Navneet Yadav, A.S.P. and S.H.O. of Lal Kurti Police Station. Sri Manoj was first asked to identify the women and he initially denied any knowledge of her but the workman immediately identified him by his name. The A.S.P. asked the lady "Kya yeh tha?" She replied "Haan Sahib". Subsequently Vijay was also brought and on being asked similarly again she said "Haan Sahib". On further probing from Manoj thought initially he refused to acknowledge the workman but later he confessed that she brought on many occasions to the branch premises by him in which he, Vijay and Sri Komal Singh, participated with her. When the woman was questioned again she confirmed the names of Sri Manoj Sri Vijay and Sri Komal Singh, she was asked in Hindi "Kya Yeh Teeno Tees November Ki Raat to Thee?" She answered "Haan Sahib Yeh Teeno us Rat Ko Thee?" At this stage even Manoj on being questioned confirmed the presence of all the three persons on the night of 30-11-98. At thus turn up even the Police requested that I should leave them to continue with their further investigation."

The enquiry officer has dealt each and every aspect of the case and the relevant papers which were required. The evidence of MW1 who was also the investigation officer and a police officer, clearly established the immoral acts of Sri Vijay. The report of the enquiry officer was totally unbiased and cannot be stated as perverse being based on no evidence because the domestic enquiry is not a criminal court and therefore the principles governing criminal

jurisprudence cannot be applied to the proceedings before it. The standard of proof required to prove the guilt beyond reasonable doubt is not necessary in domestic enquiry and a person escaping liability under Indian Penal Code may still be liable to a disciplinary proceedings. The standard of proof required in the disciplinary proceedings is that of preponderance of probability and not proved beyond the doubt. In the departmental enquiry, reliable evidence of probative value is sufficient to arrive at the findings and the conclusions. On the basis of above it can clearly be stated that the enquiry officer has analysed all the evidences produced before him at the enquiry form and since there were sufficient evidences to conclude that Sri Vijay was involved in the activities of Liquor consumption and womanizing, therefore the charge were established beyond doubt. The punishment awarded to Sri Vijay cannot be said to be highly disproportionate to the misconduct committed by him as Sri Vijay was a bank employee and who was required to exhibit the high moral and conduct, which was of a paramount importance of financial institution for its image and such act and attitude is not expected from the employee of bank. Because of highly indecent behaviours and act of moral turpitude of Sri. Vijay, the bank has lost confidence in him and Sri Vijay is not a fit person to be kept in the services of the bank and as such is not liable to be reinstated in the services of the bank. The dispute raised on behalf of the worker by the trade union is based on incorrect facts and applicant has no case and therefore the case deserves to be dismissed in limine. The bank management has therefore prayed the Tribunal may be pleased to hold that the action of the management of bank in imposing the punishment of removal from service to Sri Vijay, Attender is just fair and legal and therefore Sri Vijay is not entitled to any relief.

The worker has filed rejoinder wherein he has simply denied the allegations of the written statement.

The worker has not filed suspension order, charge sheet, replied to the charge sheet the enquiry report and the punishment order or the Appellate order.

On the other hand the management of the bank has filed following documents along with application A2-19 :

1. Suspension Order No. ZOL/IRC/SUS/W/02/98 dt. 21-12-98.
2. Chargesheet No. ZOL/IRC/CGS(W)/03/98 dt. 1-2-99.
3. Letter No. ZOL/IRC/ICGS(W)/03/99/433 dt. 3-3-99 of the Asstt. General Manager, Zonal Office, Lucknow.
4. Proceedings of the enquiry.
5. Report of the enquiry Officer dt. 9-10-99.
6. Letter No. ZOL/IRC/CGS(W)/03/99/1409 dt. 20-10-99 of the Asstt. General Manager.

7. Letter No. ZOL/IRC/CGS(W)/03/99/1409 dt. 20-10-99 of the Asstt. General Manager, Zonal Office, Lucknow.
8. Letter Dt. 30-11-99 of the Defence representative.
9. Letter No. No. ZOL/IRC/CGS(W)/03/99/1707 dt. 17-12-99 of the Asstt. General Manager, Zonal Office, Lucknow.
10. Proceedings of personal hearing dt. 24-1-2000.
11. Proceedings of the Asstt. General Manager, Zonal Office, Lucknow bearing No. ZOL/AGMS/PRS(W)/17/2000 dated 18-3-2000.
12. Proceedings of the Appellate Authority i.e. General Manager, Head Office, Manipal bearing ref. No. 123/PD/IRD(W)/DA-7 dt. 15-9-2000.
13. FIR dt. 1-12-98 lodged with police station, Sadar, Meerut.
14. Report dt. 23-1-99 of Sri G.S. Rawat, Sub-Inspector to S.P. (City) Meerut.

It is pertinent to mention that the management of the bank has filed photo copy of the judgement passed by the Hon'ble High Court, Allahabad in Civil Misc. writ petition No. 48010/2000 Komal Singh Vs. General Manager (P) Appellate Authority Syndicate Bank and Ors. and Asstt. General Manager, Syndicate Bank, Lucknow, Regional Manager, Syndicate Bank Collectorate Compound, Meerut and Sr. Branch Manager, Syndicate Bank, Meerut Cantt. The facts of the judgement are very material in the present case and the same is reproduced below :

Civil Misc. Writ Petition No. 48010 of 2000

Komal Singh,

Vs.

General Manager (P) Appellate Authority,
Syndicate Bank, & Ors.

This writ petition has been filed for quashing the Order Dt. 18th March, 2000 passed by the Asstt. General Manager, Syndicate Bank by which the petitioner has been removed from the services of the bank with immediate effect without disqualification for future employment. The petitioner has also sought the quashing of the order dated 15th Sept. 2000 by which the appeal filed by the petitioner against the aforesaid order of removal from service was dismissed by the General Manager of the Syndicate Bank. The consequential reliefs of salary, increments and other benefits to which the petitioner would have been entitled if he had not been removed from service have also been claimed.

The petitioner was working as a clerk in the Meerut Cantt. branch of the Syndicate Bank (hereinafter as the 'Bank'). On 30th Dec. 1998 some burglars broke upon the strong room of the bank in the night and burgled Rs. 7,30,000/- after murdering Sri Banwari Lal who was

working as the Security Guard of the bank. During the investigation of this incident by the police, it was found that the petitioner alongwith Sri Vijay, Attender, Sri Manoj Kumar, Water Boy late Sri Banwari Lal Security Guard in the bank and Sri Raj Kumar and another person as 'Photographer' used to assemble after office hours as well as holidays and on Sundays in a room behind the premises of the bank for drinking liquor and womanizing. The petitioner and others admitted participation in such activities during the course of police investigation. The petitioner was thereafter suspended by the order dt. 21st Dec. 1998 in contemplation of the disciplinary proceedings.

A charge sheet dt. 1st Feb. 1999 was thereafter issued to the petitioner by the bank mentioning therein that he had indulged in highly indecent behaviour on the premises of the bank and such action on his part, besides being seriously subversive of discipline, also tarnished and seriously impaired the image of the bank in the eyes of public. The petitioner was, therefore, charged for committing gross misconduct of indecent behaviour on the premises of the bank under clause 19.5(c) of the Bipartite Settlement (hereinafter referred to as the Settlement) and also for committing gross misconduct by doing acts prejudicial to the interest of the bank under clause 19.5(j) of the settlement. The petitioner submitted a reply dt. 19th Feb. 1999 denying the charges levelled against him. The departmental enquiry was then held and the enquiry officer submitted a detailed report dt. 9th Oct. 1999 which was sent to the petitioner by the communication dt. 10th Oct. 1999 for his comments. The petitioner submitted his comments by the letter dated 30th Nov. 1999. The Disciplinary Authority after examining the entire records found that the inquiry had been conducted in accordance with the procedure prescribed in the settlement and that ample opportunity had been granted to the petitioner to defend his case. The Disciplinary Authority also found that there was overwhelming evidence in support of the charges and the enquiry officer had relied upon the evidence adduced in the enquiry in arriving at his conclusion that the petitioner was at guilty of the charges levelled against him. The Disciplinary Authority, therefore, concurred and accepted the findings of the enquiry officer. It also noticed that the charges levelled against the petitioner were serious in nature and constituted gross misconduct under clauses 19.5(c) and 19.5(j) of the settlement. It also observed that for Financial Institution its image was of paramount importance and anything done to impair its image had disastrous and far reaching consequences and that the conduct of employees who indulge in such activities should be viewed seriously. The Disciplinary Authority was of the opinion that the misconduct of the petitioner was of serious nature which had affected the image of the bank adversely. Therefore, taking into consideration the gravity of the charges proved against the petitioner it passed the following order :—

"For committing gross misconduct of indecent behaviour on the premises of the bank vide clause no. 19.5(c) of the Bipartite Settlement.

Sri Komal Singh be and is hereby removed from the service of the bank with immediate effect and without disqualification for future employment. And for committing gross misconduct of doing acts prejudicial to the interest of the bank vide clause no. 19.5(j) of BPS.

Sri Komal Singh be and is hereby removed from the service of the bank with immediate effect without disqualification for future employment.

Further his period of suspension will not be treated as on duty and he is not eligible for any back wages etc. except for the subsistence allowance already paid to him."

The petitioner preferred an appeal before the General Manager before whom the petitioner was also given a personal hearing. The Appellate Authority was satisfied that there was sufficient evidence on record to sustain the charges and, therefore, concurred with the Disciplinary Authority in holding the petitioner guilty of the charges levelled against him. It also held that the punishment awarded by the Disciplinary Authority was not disproportionate to the gravity of the misconduct.

Sri J. N. Tewari Senior counsel for the petitioner submitted that as the charge levelled against the petitioner was that he alongwith others used to assemble after office hours as well on holidays and on Sundays for drinking liquor and womanizing in a room behind the premises of the Bank, the petitioner could not be held to be guilty of the misconduct contemplated under clause 19.5(c) of the settlement since it deals with drunkenness or riotous or disorderly or indecent behaviour on the premises of bank. He further submitted that even otherwise, the aforesaid allegations relates to his private life and cannot amount to misconduct and in support of his contention he placed reliance upon a judgement of this Court in the case of Pravina Solanki Vs. State of U.P. & Ors., reported in 2001 (2) ESC 719. In respect of the second charge, he submitted that the act of drinking and womanizing in a room behind the bank premises of the bank he cannot be said to be an act prejudicial to the interest of the bank and, therefore, the charge under clause 19.5(j) was also not made out. He, therefore, submitted that as act did not fall within the definition of misconduct enumerated in the settlement, the order for removal could not have been passed as was observed by the Supreme Court in Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation & Anr., AIR 1985 SC 504.

Sri S.K. Singhal learned counsel appearing for the bank, on the other hand submitted that the enquiry against the petitioner had been held in accordance with the procedure prescribed in the settlement and the Disciplinary

Authority after giving cogent reasons had found the petitioner guilty of both the charges and, accordingly, awarded the punishment of removal from service. The Appellate Authority had also considered the submissions and had also rejected the appeal. He, therefore, submitted that in such circumstances when the petitioner had indulged in such gross misconduct, no interference was called for and in support of his contention he placed reliance upon a Division Bench judgement of the Madras High Court in State of Tamil Nadu Vs. P.M. Belliappa reported in 1984(3) SLR 534.

I have carefully considered the submissions advanced by the learned counsel for the parties.

Chapter 19 of the settlement deals with disciplinary action and procedure. Clause 19.5 defined "gross misconduct" and is as follows :

"19.5 By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee.

- (a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank ;
- (b) unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
- (c) drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank :
- (d) willful damage or attempt to cause damage to the property of the bank or any of its customers;
- (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
- (f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
- (g) willful slowing down in performance of work;
- (h) gambling or betting on the premises of the bank;
- (i) speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;
- (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;
- (k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

(l) abetment or instigation of any of the acts of omissions above mentioned" (emphasis supplied)

The petitioner was charged under clauses 19.5(c) and (j) of the aforesaid settlement, sub-clause (c) of clause 19.5 deals with drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank while sub clause (j) deals with doing any act prejudicial to the interest of the bank.

Both the charges require to be dealt separately but before that it is necessary to refer to the enquiry report. The enquiry report dtd. 9th Oct. 1999 shows that on behalf of the management, the report dtd. 23rd Jan. 1999 submitted by Sri G.S. Rawat, Sub Inspector of Police to the Superintendent of Police city and a copy of the First Information Report dtd. 1st Dec. 1998 in respect of the burglary were filed and two witnesses namely Sri G.S. Rawat, Sub Inspector of Police and Sri Keshav Rao, Manager of the bank were examined while on behalf of the petitioner the letter dtd. 3rd Aug. 1998 of the bank was filed and Sri Rajeev Kumar Clerk in the Saket branch of the Syndicate Bank was also examined. The enquiry officer elaborately dealt with the evidence of the Sub Inspector of Police and the cross examination. The Sub Inspector of Police made statements regarding the reports submitted by him to the Superintendent of Police and the fact that the persons involved in the act including the petitioner admitted their involvement in womanizing and consumption liquor in the room behind the premises of the bank. He further stated that in his report of the Superintendent of Police city, he had recommended for departmental action against these persons. The enquiry officer also dealt with the evidence of the Manager of the bank and the cross examination. The Manager of the bank also clearly stated that the Superintendent of Police took him to the room at the backyard of the bank premises where items were found which clearly indicated that liquor was consumed in addition to womanizing. He also stated that in his presence, the investigation officer read out the statement of Sri Vijay recorded by him wherein he stated that he had consumed liquor and indulged in womanizing on many occasions along with other staff members and the petitioner. The entire statement was read out in the presence of Sri Vijay and he admitted in the presence of Manager that he had given the statement out of his own free will and no pressure of any kind was exerted on him. The Manager of the Bank also stated that at Lal Kurti Police Station a woman sitting there in presence of the Additional Superintendent of Police & C. Station House Officer identified Sri Manoj and others and Sri Manoj also confirmed that she was brought to that room on many occasions. After a careful analysis of the evidence on record, the enquiry officer observed that there was sufficient evidence to conclude that the petitioner was involved in the activity of liquor consumption and womanizing in the room behind the premises of the bank. In respect of the first charge, the enquiry officer was of the

opinion that as the room was at the backyard of the premises of the bank it cannot be said that it was not within the premises of the bank and in respect of charge no. 2, the enquiry officer was of the opinion that the act was prejudicial to the interest of the bank.

FIRST CHARGE

The contention of Sri J. N. Tewari, learned Senior counsel for the petitioner in respect of first charge is that there cannot be any gross misconduct under clause 19.5(c) of the settlement since the petitioner had not indulged in any act on the premises of the bank as even the charge sheet mentions that the petitioner had indulged in drinking liquor and womanizing in a room behind the bank. Sri Tewari submitted that there was no evidence on the record to indicate that the room behind the premises of the bank had also been letout to the bank.

Sri P. K. Singal learned counsel appearing for the respondent bank, however, submitted that since the room was situated at the backyard of the premises of the bank such a strict interpretation of the provisions of clause 19.5(c) of the settlement should not be given and it must be taken that the petitioner had been indulging in activities on the premises of the bank.

It is true that a strict interpretation of "gross misconduct" as defined in clause 19.5(c) of the settlement would require that the employee should be involved in drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank and therefore in the present case when the portion behind the premises of the bank was not actually let out to the bank the act would not amount to "gross misconduct" but it is not disputed by the learned senior counsel for the petitioner that the room was situated just behind the premises of the bank in the backyard. It has, therefore, become necessary to consider whether even in such circumstances, when the act was committed in the immediate or close proximity of the premises of the bank, it may still fall within the definition of "gross misconduct" under clause 19.5(c) of the settlement. The Supreme Court has repeatedly observed that the range of activities which may amount to act of "gross misconduct" are so varied that it may be possible for the employer to exhaustively enumerate them. An employee cannot, therefore, be permitted to wriggle out of the clutches of the definition of 'gross misconduct' by shifting the activities to the immediate neighbourhood of the premises and then claim that in view of the definition of "gross misconduct" he cannot be punished.

This aspect was highlighted by the decision of the Supreme Court in Central India Coalfields Ltd., Calcutta Vs Ram Bilas Shobnath, AIR 1961 SC 1189, as the question involved therein was whether the charge of misconduct could be made out even if the misbehaviour mentioned in

the standing order had taken place outside the working hours as well as outside the place of employment. The workman was employed to perform his duties as an underground Munshi in the colliery. Complaints had been received that the workman went to the quarters of his co-workmen drunk and in a state of heavy intoxication and then abused his co-workmen by using dirty and filthy language. He also entered the room and threw the articles hither and thither. The Tribunal took the view that Standing Order no. 29(5) which deals with drunkenness, fighting, riotous or disorderly or indecent behaviour strictly did not apply because, though the workman was guilty of the misbehaviour mentioned in the said Standing Order, his misconduct had taken place outside the working hours as well as outside the pit where he had to discharge his duties. Repelling this view, the Supreme Court observed :—

“It is common ground that quarters are provided by the appellant to its employees and they are situated on the coal bearing area at the distance of about 200 feet from the pit-mouth according to the appellant and at a distance of 2000 feet according to the respondent, standing Order No. 29(5) provide that drunkenness, fighting, riotous or disorderly or indecent behaviour constitutes misconduct which entails dismissal. Normally this Standing Order would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. It may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order No. 29(5) but in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal bearing area and the conduct of the respondent which is proved clearly amounts both to drunkenness as well as riotous, disorderly and indecent behavior. In fact as the enquiry officer in substance has found unless the appellant took some action against the respondent, breach of peace was threatened and that is not a matter which the appellant could consider with compliance” (emphasis supplied)

Applying the same principle to the facts and circumstances of the present case, it has to be held that the petitioner was guilty of “gross misconduct” as defined in clause 19.5(c) of the settlement as the act of consumption of liquor and womanizing had taken place in a room just behind the premises of the bank. This is precisely what the enquiry officer in his report dt. 9th Oct. 1999 had observed as he clearly mentioned that since the room was at the backyard of the premises, it cannot be said that it was not within the premises, of the bank. There is therefore, no infirmity in the view taken by the Disciplinary authority. The contention advanced by the learned senior counsel for the petitioner cannot be accepted.

SECOND CHARGE

This charge is in respect of ‘gross misconduct’ enumerate under clause 19.5(j) of the settlement dealing with an act prejudicial to the interest of the bank but before proceeding to discuss it, is necessary to refer to certain decisions of the Supreme Court dealing with the high standards of honesty, integrity and conduct exerted from the employees of a bank.

In Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik, (1996) 9 SCC 69 the Supreme Court observed:

“.....If each officer/employee allowed to act beyond his authority, the discipline of the organisation/Bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favour and largesse. No organisation more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations As mentioned hereinbefore the very discipline of an organisation and more particularly a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere”. (emphasis supplied)

In Tara Chand Vyas Vs., Chairman & Disciplinary Authority and others (1997) 4 SCC 565 the Supreme Court :—

“The nationalised banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty. It impinges upon the enforcement of the constitutional philosophy, objectives and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally become amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and services are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would therefore be necessary to consider, from his perspective the need

for disciplinary action to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out the disciplinary action in accordance with rules last rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society.” (emphasis supplied)

In *Ganesh Santa Ram Sirur Vs. State Bank of India and another* (2005) 1 SCC 13 the Supreme Court observed :

“..... Mr. Salve submitted that the appellant, the Branch Manager of a Bank is required to exercise higher standards of honesty and integrity when he deals with money of the depositors and the customers and, therefore, he is required to take all possible steps to protect the interest of the bank to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of bank officer. Accordingly to Mr. Salve good conduct and discipline are inseparable for the functioning of every officer, Manager or employee of the bank, who deals with public money and there is no defence available to say that no loss or profit resulted in the case, when the manager acted without authority and contrary to the Rules and the scheme which is formulated to help the educated unemployed youth. Mr. Salve’s above submission is well merited acceptance and we see much force in the said submission.

The bank manager/officer and employees of any bank, nationalised/or non-nationalised are expected to act and discharge their functions in accordance with rules and regulations of the bank. Acting beyond the one’s authority is by itself a breach of discipline and trust and misconduct. (emphasis supplied)

In *State Bank of India & Anr. Vs. Bela Bagchi & Ors.*, (2005) 7 SCC 435 the Supreme Court observed;

“A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all

possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank.” (emphasis supplied)

The aforesaid decisions of the Supreme Court clearly emphasis that for a bank to function properly and effectively it is imperative for its officers and employees to observe the prescribed norms and discipline and any conduct that damages, destroys, defeats or tends to defeat the said purposes should be meted our with disciplinary action. Good conduct and discipline are inseparable for the functioning of every officer, Manager or employee of the bank and every officer or employee of the bank must take all possible steps to protect the interest of the bank and do nothing which is unbecoming of a bank officer/employee.

It is in the light of the aforesaid observations made by the Supreme Court for the maintenance of high standards by the employees of the bank that it has to be examined whether the act of the petitioner in assembling in the room behind the bank premises along with some others persons for drinking and womanizing can be said to be an act that is prejudicial to the interest of the bank, therefore, within the definition of “gross misconduct” under clause 19.5 (j) of the settlement. It must also be remembered that “womanizing” has been defined to mean “pursue of associate illicitly with woman” while prejudicial has been defined to mean tending to injure or impair, damaging detrimental.”

The meaning and scope of misconduct was examined by the Supreme Court in *M.M. Malhotra Vs. Union of India & Ors.* (2005) 8 SCC 351. The charges levelled in the show cause notice issued to the appellant were in respect of having illicit relations with Miss Anna Suja John; ill-treatment meted out and criminal force used by the appellant on his wife and having contracted “plural marriage” with Miss Anna Suja John. The enquiry officer on a consideration of the materials observed that there was irrefutable evidence of plural marriage and disgraceful conduct of not only sleeping with Miss Anna Suja John but also using criminal force against his wife. This brought about an order of compulsory retirement which was challenged in the High Court. The High Court dismissed the writ petition and held that the conduct of the appellant was unbecoming of a member of the disciplined force and held that he was guilty of an act which was prejudicial to the good order and discipline. The Supreme Court observed that the subsequent marriage with Miss Anna Suja John was not a case of plural marriage but then it also examined the other contention regarding cruelly had highlighted now

such acts were prejudicial to good order and discipline. In this context, the Supreme Court observed as follows:

"The range of activities which may amount to acts which are inconsistent with the interest of Public Service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct is not capable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

The Supreme Court therefore held that though the charge of plural marriage could not be established, yet taking into account the other allegations, it was an act prejudicial to good order and discipline.

"The range of activities which may amount to acts which are inconsistent with the interest of Public Service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has therefore to be noted that the word "misconduct" capable of precise definition. But at the same time though incapable of precise definition, the work misconduct on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

The Supreme Court, therefore held that though the charge of plural marriage could not be established yet taking into account the other allegations, it was an act prejudicial to good order and discipline.

In *State Bank of India Vs. K.C. Tharakan & Ors.* (2005) 8 SCC 428 the Supreme Court examined as to what conduct affect the interest of the bank. In the said case a clerk-cum-typist of the bank was appearing at an examination conducted by the Indian Institute of Bankers. One of the Senior officers of the bank was the Invigilator during the examination. The Clerk-cum-typist wrote three letters to the Institute of Bankers making allegations against the said Invigilator. The bank issued a charge sheet dt. 8th April 1969 to him on the ground that he had misconducted himself by making serious allegations against a senior officer and therefore, indulged in a conduct which was prejudicial to the interest of the bank. He was discharged from the services of the bank. The clerk raised

a preliminary objection that the framed charge did not constitute conduct. This was rejected by the Tribunal against which a writ petition filed in the High Court, which was allowed. The learned Judge held that no charge had been made out as under the Standing Orders disciplinary action could only be taken provided the act was prejudicial to the interest of the Bank and since the letters written by the clerk were in respect of the conduct as an Invigilator and not as an officer of the bank, no charge could be made out. The appeal filed before the Division Bench of the High Court was also dismissed. The Supreme Court, however, allowed the appeal the observed;

"An allegation of corruption against a senior officer would affect the interest of the bank. In our view, it makes no difference whether the allegation of corruption is in conduct/work of the officer outside the bank. The reputation of the bank gets affected if an allegation is made that it officer(s) are corrupt. Thus, an allegation of corruption against a senior officer is one which would affect the interest of the bank. The learned Single Judge was thus absolutely wrong in holding that no charge had been made out." (emphasis supplied)

It would also be useful to refer to the decision of the Supreme Court in *S. Govinda Menon Vs Union of India AIR 1967 SC 1274* wherein it was observed:

"Rule 4 (1) does not impose any limitation or qualification as to the nature of the act or omission in respect of which disciplinary proceedings can be instituted..... It does not say that the act or omission must have been committed in the discharge of his duty or in the course of his employment as a Government servant. It is, therefore, open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omissions which cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the Service. In our opinion, it is not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant." (emphasis supplied)

In this context reference may also be made to the following observations of Lpes. L.J. in Pearce V Foster, (1886) 17 QBD 536 at P. 542.

"If a servant conduct himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct according to my view need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant." (emphasis supplied).

In P.M. Bellappa (supra) the Division Bench of the Madras High Court examined what moral turpitude is and in this context observed:—

"There is a reference to the petitioner's conduct amounting to moral turpitude. We have to point out that the expressions "moral turpitude or delinquency" are not to receive a narrow construction and it would include conduct contrary to and opposed to good morals and which is unethical. The said expressions have not found a categoric definition anywhere, but we can safely take it that it would include anything done contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general. It would imply depravity and wickedness of character or disposition of the person charged with the particular conduct. It may also include an act which shocks the moral conscience of society in general. It is now well settled that the misconduct or unbecoming conduct or conduct of moral turpitude need not necessarily relate to an activity in the course of the employment and it could relate to an activity outside the scope of the employment. Considering the high nature of the office, the incumbent is placed in and the reputation of integrity that is required for the discharge of the duties annexed to that office, if the act of the Government servant brings down the reputation of not only himself but also the office which he occupies, the employment, the Government can definitely set the rule in motion for disciplinary action. If the Government servant is found indulging in a conduct which is unworthy or unbecoming of an official of the State, definitely, we cannot put a fetter on the discretion of the State with regard to the action to be taken by it in this context. The state, keeping its administration well pruned, cannot be told by the Court as to what type of officers it should entertain and what type of conduct it should tolerate and ignore. The discretion is that of the State in these matters and unless the discretion exercise and the decision taken could come within the mischief of any of the well settled principles, this court should not superimpose its ideas and scuttle down the discretion to an illusion." (emphasis supplied)

The aforesaid decisions clearly emphasis that for an act to be prejudicial to the interest of the organisation it is

not necessary that it should be only in respect of his duties in the organisation but could be for acts committed somewhere else, it reflects on the reputation of the officer or his integrity, good faith or devotion to duty and it would be sufficient if the misconduct is prejudicial or is likely to be prejudicial to the interest of reputation of the employer.

In the present case the petitioner alongwith others used to assemble after officer hours in the room behind the premises of the bank for consumption of liquor and for womanizing. The petitioner was charged under clause 19.5 (j) of the settlement that this highly indecent behaviour, apart from being subsersive of discipline had also tarnished and serious impaired the image of the bank in the eyes of public, and therefore was prejudicial to the interest of the bank. While analyzing charge No. 1, I have observed that the activities carried out by the petitioner in the room behind the premises of the bank should be taken to have been carried out on the premises of the bank but even if it is assumed that the activities were not carried out on the premises of the bank then too in view of the aforesaid decisions of the Supreme Court. It is not necessary to establish the charge under clause 19.5 (j) of the settlement that the activities should be carried out on the premises of the bank and all that has to be examined is whether such activities periodically affect the interest of the Bank.

The Disciplinary Authority noticed that for Financial Institutions its image is of paramount importance and anything done to impair its image has disastrous and far reaching consequences and therefore the conduct of an employee who indulges in such activities should be viewed very seriously as it affects the image of the bank adversely. The Appellate Authority was also of the view that the activities of the petitioner in a room at the backyard of the premises of the bank had tarnished the image of the bank before the public, clause 19.5 (j) of the settlement does not require that such activities should be carried out on the premises of the bank. It merely provides that any act prejudicial to the interest of the bank would amount to gross misconduct for which action can be taken. The Supreme Court in the case of M.M. Malhotra (Supra) observed that the act of an Air Force Officer in using criminal force against his wife and sleeping with another lady in the presence of his wife amounted to an act which was periodical to the good order and discipline. In K.C. Tharkar & Ors (supra) the Supreme Court observed that an allegations of corruption against a senior officer would also affect the interest of the bank even though it may not be in respect of the conduct/work of that officer in respect of the work of the bank. In S. Govinda Menon (supra) the Supreme Court observed that action could be taken for an act even if it was committed somewhere else if it reflects on the reputation of the officer his integrity, good faith or devotion to duty.

The petitioner had indulged in drinking and womanizing in a room behind the premises of the bank.

The activities carried out by the petitioner clearly impair the image of the bank and have far reaching consequences. It is for this reason that it has been repeatedly observed by the Supreme Court that every employee of the bank would strive to see that the banking operations or service are rendered in the best interest of the system and any conduct that damages, destroys; defeats or tends to defeat the said purposes should be meted out with disciplinary action. The act committed by the petitioner in associating illicitly with woman is clearly forbidden and would tend to lower the image of the bank in the eyes of the public. The reputation of the bank would obviously get affected. Thus, in view of the aforesaid decisions of the Supreme Court, it is evident that the act committed by the petitioner was an act prejudicial to the interest of the bank. It cannot, therefore, be said that clause 19.5 (j) was not attracted.

The decision in the case of Pravina Solanki (Supra) relied upon by the learned senior counsel for the petitioner is not applicable because in the present case, the Disciplinary Authority had clearly come to the conclusion that the conduct of the petitioner had adversely affect the image of the bank before the public

No Evidence

Sri J. N. Tewari learned senior counsel for the petitioner then submitted that the charge consumption liquor and womanizing in the room behind.

The back premises cannot be said to be made out as there is no clinching evidence in this regard. This regard. This connection of the learned senior council cannot also be accepted. The Supreme Court in the case of High Court of judicature at Bombay through its Registrar Vs. Shri Uday Singh S/o Ganpatrao Naik Nimbalkar and Ors. reported in JT 1997 (5) SC 298 held that disciplinary proceeding are not criminal trial in which the charge is required to be proved beyond doubt. In the case of disciplinary enquiry, the technical rules of evidence have no application and preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct and whether as a reasonable man, in the circumstances. Would be justified in reaching that conclusion the same view was reiterated by the Supreme Court in the case of Depot Manager, A.P. State Road Transport Corporation and Mohd. Yousuf Miya reported in 1997(77) F.L.R. and in the case of Lalit Popli Vs. Canera Bank and others reported in (2003) 3 SCC 583. It was held that strict standard of proof or applicability of the evidence Act stands excluded and the standard of proof in the departmental proceedings is not the same as of the criminal trial. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him.

The observations made by Supreme Court in the case of Sri Udaysingh (supre) regarding reappreciation of evidence by the High Court must also not be forgotten. It was observed as follows :

"In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion, Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi vs. Union of India (1995) 6 SCC 749, State of Tamil Nadu vs. T.V. Venugopalan JT 1994 (5) SC 337 = (1994) 6SCC 302 (SCC para 7), Union of India vs. Upendra Singh JT 1994 (1) SC 658 = (1994) 3 SCC 357 (SCC para 6), Government of Tamil Nadu vs. A. Rajapandian JT 1994 (7) SC 492 = (1994) 1 SCC 216 (SCC para 4) and B.C. Chaturvedi vs. Union of India (at pp. 759-60)"

The Supreme Court in Rae Bareli Kshetriya Gramin Bank vs. Bhola Nath Singh and Ors, (1997) 3 SCC 657 held as follows :—

"Under these circumstances, the question arises whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained."

In S. R. Saini vs. State of Punjab (1999) 8 SCC 90, the Supreme Court observed as follow :—

"Before advertiring to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in

mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority in the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy of reliability of the evidence is not a matter which can be permitted to be canvassed before the court in write proceeding.

A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the record. Shows that the inquiring authority has based its conclusions on materials available on record after considering the defiance put forth by the appellant and these decision in our opinion, have been taken in a reasonable manner and objectively, the conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority like wise the high court has looked in to the material based on which the enquiry officer has come to the conclusion, with in the limited scope available to it under article 226 of the constitution and we do not find any fault with the findings of the high court in the regard.

In the case of *Lalit P opili vs. Canara Bank and Ors.* (2003)3 SCC 583 the Supreme Court observed as follow:—

“While exercising jurisdiction under article 226 of the constitution the high court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injuries or violation of principle of natural justice judicial review is not akin to adjudication of the case on merits as an appellate authority.”

In the present case, the inquiry officer, on the basis of evidence on the record both documentary and oral has recorded a categorical finding that the petitioner has been consuming liquor and indulging in womanizing in a room behind the bank premises. The disciplinary authority and the appellate authority have also examined the matter in detail and have concurred with the finding recorded by the inquiry officer. Learned senior consul for the petitioner has not been able to substantiate that the aforesaid finding is either arbitrary or perverse. It is not possible for this court to re-appreciate the evidence and record a different finding.

ALTERNATE ARGUMENT

Sri P.K. Singhal learned counsel appearing for the respondent bank raised an alternative arguments that even if the charge no. 1 is held to be not made out in the sense that the activities were not carried out on the premises of the bank then too the order of removal of service can be sustained in view of the finding in respect of charge No.2

there is merit in contention. In the first instance. It must be noted that the Disciplinary Authority has awarded separate punishment in respect of charge No. 1 and charge No. 2. Therefore even if charge no. 1 is not made out then too the punishment of removal service can be sustained under charge no. 2. This apart this question was also considered by the Supreme Court in P.D. Agarwal Vs. State Bank of India and Ors. 2006 AIRSCW 2504. The Supreme Court after taking into consideration its earlier decision in State of Orissa & Ors. Vs. Bidyabhusan Mohapatra AIR 1963 SC 779 held that even if the charges which have been proved justified the importation of punishment dismissal from service, that code can sustain the order of punishment. In the present case, charge no. 2 against the petitioner is very serious and, therefore, the order removing the petitioner from service can not be set aside even it is assumed that charge No. 1 is not made out.

Thus, as none of the contentions advanced on behalf of the petitioner have any force the writ petition is liable to be dismissed and is accordingly dismissed.

Sd/-
Dilip Gupta

Issues were framed on 24-9-03 which are as under;

1. Whether the charge sheet was not issued by the Disciplinary Authority? If so, its effect.
2. Whether the charge sheet is vague and not specific as alleged on behalf of the worker?
3. Whether the findings of the Enquiry officer are perversed and based on no evidence as alleged on behalf of the worker.
4. Whether the extreme penalty of removal from service is highly objectionable and deserves to be set aside? and
5. What relief can be granted to the worker by this Tribunal?

The worker got summoned attendance register for the period from 1-11-98 to 30-12-98 and the management filed the same which is paper no. C-32.

Worker examined himself and the opposite party examined Sri AK Srivastava as management witness.

Worker filed written argument and the opposite party also filed written arguments. Parties will given opportunity to put forth from oral submissions and they were heard. According to the charge sheet during the course of police investigation it was found that in a room behind the bank premises Sri Vijay alongwith Sri Komal Singh, Clerk of Meerut cantt branch Manoj Water boy Late Banwari Lal, Raj Kumar S/o Banwari friend of Late Sri Banwari Lal and another person known as photographer use to assemble after office hours as well as on holidays and sundays for drinking liquor indulging in womanizing etc. In the circumstances it was to be ascertained whether alleged room in the bank premises or outside the bank. The relevant of the extract of the order sheet dt. 5-5-05 is reproduced below;

"Case taken up while perusing the file for dictating the Award, I found that worker has been charged for misconduct under Article 19.5 (c) & (j) which are as under;

(c) drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank;

(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

According to report of Police Station, Sadar Bazar, Cantt. Meerut during investigation this fact was found that behind the bank premises in the room several persons including Vijay Pahalwan (worker) used to collect and they used to drink liquor and indulged in womanizing. Worker has stated in his evidence that the room alleged to be use for offence is not in the premises of the bank, instead, it is out side the bank. His statement in para 4 is as follows;

"मुझ पर लगे आरोपों की जांच सही तरीके से नहीं की गई थी। मैं जांच कार्यवाही की प्रत्येक तारीख पर उपस्थित था। जिस कमरे का उल्लेख चार्ज शीट में है वह बैंक से बाहर था। उस कमरे के मालिक श्री चंद्रद्वा जी उस कमरे का मालिक वही था बैंक का नहीं था। मैं उस कमरे में कभी नहीं गया। FIR में मेरा नाम नहीं था।"

In the charge sheet it is written "That in the course of Police investigation it was found that in a room behind the bank premises, you along with Sri Komal Singh, Clerk Meerut Cantt. branch. Sri Manoj, Water boy, Late Sri Banwari Lal, Security Guard, Sri Raj Kumar S/o Sri Banwari Lal (friend of late Sri Banwari Lal, Guard) and another person known as PHOTOGRAPHER used to assemble after office hours as well as on holidays and on Sundays for drinking liquor and indulging in womanizing etc."

In the circumstances it is to be ascertained that alleged room is within the bank premises or outside the bank premises.

In the circumstances aforesaid, worker and the management of the bank is directed to inspect the room and prepare a site plan with the assistance of their representative to depict if the room falls within the premises of the bank or outside the premises of the bank and report be filed in the court within 2 months from the date of order. Let the copy of order be sent to parties concerned immediately by registered post.

Office will report after passing of order when it has sent the copy of order sheet.

Dt. : 5-5-05

Sd/-

PRESIDING OFFICER

In the pursuance of the order inspection report C-40 and C-41 were filed.

The representative of the opposite party moved an application C-44 for permission to examine Sri Keshav Rao the then Branch Manager in support of spot inspection

report. The opposite party filed a objection paper No. C-45 against the application on behalf of opposite party. After hearing the parties worker provided opportunity to lead evidence on their inspection report in the court. It was also ordered that the worker will have first opportunity to lead evidence and thereafter the opposite party will have the opportunity to lead its evidence accordingly application and objection was disposed off.

On 29-3-06 Sri Rajendra Kumar was examined on behalf of the worker and the opposite party filed the affidavit of its witness as per the orders of the court. Thereafter the representative of the opposite party filed the judgement of Hon'ble High Court passed in writ petition 48010 of 2000 Komal Singh vs General Manager, Syndicate Bank.

Again heard the arguments.

It is concluded by the Hon'ble High Court in the judgement between Komal Singh vs. General Manager, Syndicate Bank "This is precisely the enquiry officer in his report dt. 9-10-99 had observed as he clearly mentioned that since the room was in the backyard of the premises it cannot be said that it was not within the premises of the bank. There is therefore, no infirmity in view taken by the disciplinary authority. The contention advanced of the learned senior counsel cannot be accepted."

The trade union has examined its office bearer Sri Rajiv Kumar and has stated that he is "प्रान्तीय उपाध्यक्ष". Extract of cross examination of the said witness is reproduced below :

- प्र. प्रश्नगत बैंक की शाखा चारों तरफ चारदीवारी से घिरी है या नहीं ?
- उ. जहां तक मुझे याद है तीन तरफ से टूटी-फूटी दीवार है, एक तरफ है ही नहीं।
- प्र. शाखा में घुसने के लिये सड़क की तरफ से एक दीवार है जिसमें दो गेट लगे हैं?
- उ. शाखा में घुसने की तरफ एक $2\frac{1}{2}$ फुटी दीवार है जिसमें गेट लगा है।
- प्र. इसका मतलब यह है कि उस गेट में प्रवेश के बाद परिसर में और किसी का हिस्सा है और न ही किसी की किरायेदारी में हैं?
- उ. उक्त परिसर में प्रवेश करने के लिये गेट के अतिरिक्त हर तरफ से दीवारें इतनी छोटी या टूटी हैं कि कहीं से भी बाहरी आदमी उसमें आसानी से प्रवेश कर सकता है। उसमें एक लम्बे समय तक मारूति उद्योग का गैराज रहा।

On above question and answer the Presiding Officer has given his observation that"

"गवाह प्रश्न का स्पष्ट उत्तर नहीं दे रहा है।"

प्र. बैंक परिसर के पूर्व की तरफ किसका भवन या परिसर है?

३. बैंक के उत्तर में दो छोटे दूटे-फूटे या उसके पीछे मिलेट्री एरिया पड़ता है।
- प्र. उपरोक्त कमरों के बाद मिलेट्री एरिया की बाउन्ड्रीवाल है?
- उ. उक्त कमरे के बाद एक आधी अधूरी दीवार है।
- प्र. शाखा का पिछला दरवाजा उपरोक्त कमरों के सामने खुलता है?
- उ. मुझे इद नहीं।
- प्र. दूटी-फूटी बाउन्ड्रीवाल के अन्दर ही बैंक परिसर है।
- उ. ऐसा मैं नहीं कह सकता।
- प्र. आपकों बैंक की कियायेदारी के विषय में कुछ पता है?
- उ. जितना मुझे मालूम है बता चुका हूँ।

The representative of the opposite party Sri Vinay Shankar has filed his inspection report after inspecting property and that is available on the record. The inspect report contains site plan showing its boundary as under :

1. West : Main gate
2. East : Long space open land
3. West : Workshop of Maruti Udyog
4. East : Bank's back door thereafter two rooms

The respresentative of the bank has written in the report that bank premises are surrounded by four walls having one main gate and thereafter there is ample open space all round the branch, having two rooms on its back yard in the inner side of the bank boundary wall. Both rooms are still under the physical possession of the bank as the same cannot be used by any outside because after banking hours, the main gate of the boundary wall is being closed and there is no tenant or occupier of the entire accommodation including room in question which were being used by the worker alongwith his other associate outsiders for illegal acts and omission of consuming alcohol and womanization activities.

From careful examination of statement of Sri Rajiv Kumar read with inspection report of the representative of the opposite party I come to the conclusion that the rooms in question which was used for immoral activities by the worker and his associates exists within the premises (back yard) of the bank and there is no doubt about it that the rooms used for such activities in the premises of the bank. It is noteworthy that the trade has produced as many as 4 photos but the same are irrelevant as it does not depict the correct position.

Now I come to the issue framed by this court on 24-09-03 which are written at page 40.

Issue No. 1 has not been pressed by the representative of the trade union.

Issue No. 2 also not pressed by the representative of the trade union.

Now I, come to the Issue No. 3 which is as follow:

Issue No. 3 : Whether the findings of the enquiry officer are perversed and based on no evidence as alleged on behalf of the worker?

Worker has admitted in his statement that the bank robbery took place on 1-12-98 and he has also stated that at that time he was posted at Extension counter of Kankar Khera which is distance of about 2 Kms. from the main branch. He has also admitted that a FIR was lodged however, he was not named in FIR. He has admitted that he was served with charge sheet dt. 1-2-99 by the bank. He has also stated that the enquiry was not conducted correctly however he has admitted that he was present on each day and date of proceeding of the enquiry. He has also stated that on 3-12-98 at about 1.30 night police took him up and after interrogation and finding him not guilty he was left out. He has stated that whatever he stated before police, it was under fear and undue pressure. Worker has admitted that he was suspended on 11-12-98 and was served with charge sheet thereafter.

In cross examination worker has denied that any enquiry proceeding was conducted against him but when he was confronted with the enquiry proceeding paper No. 19/9 to 19/29, he admitted that on every page there are his signatures. But later on his own statement that he went in the enquiry but it was not read over to him. He also admitted that enquiry proceedings continued on different dates. He has also admitted that during the course of enquiry he was assisted by Rajiv Kumar and Sri Anil Srivastava who are the office bearer of the trade union. He has also admitted that both of his representative stated above where present in the enquiry proceedings through out and they placed his case before the enquiry. He has also admitted that he was also present in the enquiry proceeding alongwith his representative. Worker has also admitted that he has no personal complaint against the enquiry officer. He has also admitted that disciplinary authority gave him opportunity of personal hearing. Worker has also admitted that he preferred appeal. On perusal enquiry proceedings paper No. 19/9 to 19/29 following facts are ernodient.

On 1-6-99 the enquiry officer read out the charge sheet to the worker and asked him whether he admits the charge. Worker replied he has heard and understood the charge sheet and he denies the charges levelled against him. Thereafter the presenting officer and management representative furnished the list of witness and documents for proving the charge and copy of the said list of witness and documents were provided to the worker. Management representative produced the original certified copy of the documents listed by him and he informed that same has been handed over to worker. Worker admitted in the enquiry

proceeding that he got the certified copies of the documents. Worker has stated that FIR is not against him and therefore i.e. is not relevant. The report purported to have been submitted by the Sub Inspector is on the plain paper and also does not any seal of the department/authorities and it does not admitted. During the course of enquiry management representative submitted that FIR was lodged by the bank in connection with "हकेती" held at the Cantt. Branch, Meerut and during the investigation by the police authorities it was found that charge-sheeted employee was involved in some activities for which he has been charged vide charge-sheet under reference, and hence FIR is relevant. Management representative also submitted that carbon copy of the report submitted by the Sub-Inspector to Supdt. of Police has been duly forwarded to us by the Regional Manager, Meerut. He also informed that concerned Sub Inspector is also produced as witness in the enquiry as per list submitted by him and hence there is no reason to doubt the genuineness of the document.

The management examined Sri G. K. Rawat, Sub Inspector of police as MW-1. He has proved the documents marked MEX 2 which is photo copy FIR criminal case No. 478/98 under section 460 IPC which was lodged by the Branch Manager, Cantt. branch, Meerut Mr. Keshav Rao. The case was investigated by him, (Shri G. K. Rawat) and he identified the documents MEX-1 which is carbon copy of the letter which is written and signed by him. He confirmed contents of MEX-1. He also identified the worker Vijay who was present in the proceeding. Worker was cross-examined on behalf of the worker. During the course of examination it was proved that he was investigating officer of the case and FIR which is MEX-2. Two witness examined on behalf of the management is Mr. M. Keshav Rao, Manager Cantt branch, Meerut. He has stated that police investigation was carried out by Sri G. S. Rawat on 1-12-98 itself and on preliminary enquiry he collected the names and addresses of the staff. On 2-12-98 Supdt. of Police also joined the investigation. They interrogated the water boy the son of the part Time Sweeper and the tea-vendor on that day. Subsequently the Supdt. of Police took him to the room at the backyard of the branch premises where a corner, he also found caps of liquor bottles, condom packets etc. On probing further in and around this room they could find a number of similar items in addition to the liquor pouches. This made the Supdt. of Police, City to conclude that liquor was consumed in addition to womenising activity. Witness further stated that on 3-12-98 it was brought to his notice that Vijay, attender was in police custody and it was requested to him to help in releasing him therefore he went to Sadar Police Station along with Capt. Rajeshwar Singh, Security Officer, RO, Cantt branch, Meerut and Sri Subhash Chopra, Asstt. Manager and met the SHO and the investigating officer Sri G.S. Rawat. In his presence Sri G.S. Rawat read out a statement recorded by him from Vijay wherein worker

informed the police of having consumed liquor on a number of occasions along with few other staff members including Komal Singh. He further informed the police that womenising activity also took place. It was also recorded that Sri Banwari, the deceased private armed guard and Manoj the water boy took part in the above activities but he did not participate. After this Vijay was brought to the SHO's room and the entire statement was read out in his presence. Worker confessed in his presence that he had given this statement on his own free will as a statement based on facts and no pressure of any kind was put on him. He informed that he was treated properly by the police and was even given something to eat. Witness has further stated that on his request Vijay was allowed to go and he took him with him to work in the base branch. The police had requested for the presence of Sri Manoj, water boy to continue with the investigation. Witness stated that he requested Sri Rawat that interrogation to take place in his presence but he insisted that it shall be done at the police station. Within 10 minutes of preliminary questioning of Manoj, a message was brought to Sri Rawat to bring Manoj and Vijay to the Lal Kurti Police Station. The witness accordingly went to branch collected Sri Manoj and Vijay and reached to Lal Kurti Police Station. The witness also requested his staff to accompany him. When he reached the Lal Kurti Police Station he found a woman seated on the ground near a chair occupied by Sri Navneet Yadav, ASP and SHO of Lal Kurti Police Station.

Shri Manoj was first asked to identify the women and she initially denied any knowledge of her but the witness immediately identified her by her name. The ASP asked the lady "Kya yeh tha?" She replied "Haan Sahib" Subsequently Vijay was also brought and on being asked similarly again she said "Haan Sahib". On further probing from Manoj though initially he refused to acknowledge the woman but later he confessed that she was brought on many occasions to the branch by him which he, Vijay and Komal Singh, participated with her. When the woman was questioned again she confirmed the names of Shri Manoj, Sri Vijay and Komal Singh. She was asked in Hindi "KYA YEH TEENO TEES NOVEMBER KI RAAT KOTHEE." She answered "HAAN SAHIB YEH TEENO US RAT KO THEE." At this stage even Manoj on being questioned confirmed the presence of all the three persons on the night of 30-11-98. At this turn up event the police requested that he should leave them to continue with their further investigation.

The above witness was cross-examined on behalf of the workman. Worker was given an opportunity to lead defence witness. Worker examined Rajiv Kumar as DW-I. Sri Rajiv Kumar states that on coming to know that Vijay has been detailed at Sadar Police Station and he rushed to police station and subsequently the Manager Cantt. branch Sri Rao also reached along with Sri Chopra, Asstt. Manager of the branch. Sri Rajiv Kumar question SHO for the

detention of the worker the SHO informed that he has brought him in connection of a womanising and liquor consumption behind the premises of the bank in cross examination he has stated that other staff members also reached the police station. However, he denied that worker made any confessional statement.

Worker did not produce any other witness and he has also not examined himself and insisted to close his evidence.

I have perused the enquiry report on record and find that findings of the enquiry officer are based on evidence on record and it does not suffer any perversity.

On the discussion above I came to the conclusion that the enquiry has been conducted in accordance with the principle of natural justice and the findings of the enquiry officer does not suffer any perversity. The issue No. 3 is therefore decided against the worker/trade union.

Now issue No. 4 is taken up regarding penalty. Issue No. 4 : Whether the extreme penalty of removal from service is highly objectionable and deserves to be set aside?

Conduct of the workman is such which can not be termed as light misconduct but it is serious misconduct on the part of the bank employee. Consumption of liquor in the premises of the bank and womanising is such a activity which brings bad name to the banking industry and it can not be taken leniently. Hon'ble High Court, Allahabad, Lucknow bench the judgment of which is cited on page 17 to 40 passed in the case of the co-workman Komal Singh involved in the same incident is guideline for me to come to the conclusion that extreme penalty of removal is warranted in the present case and bank can not be forced to keep such employee in the bank. Issue No. 4 is decided against the workman.

On the discussions aforesaid I come to the conclusion that termination of Sri Vijay from Syndicate Bank by its management vide order dtd. 18-3-2000 is just fair and legal.

Issue No. 5 : What relief can be granted to the worker by this Tribunal.

Since the termination is just fair and legal in the circumstances the worker is not entitled to any relief. Award passed accordingly

LUCKNOW

18-6-2007

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 26 जून, 2007

का.आ. 1999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय अर्नाकुलम के पंचाट (संदर्भ संख्या 185/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-6-2007 को प्राप्त हुआ था।

[सं. एल-I 2012/254/1999-आई.आर. (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S. O. 1999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 185/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 26-6-2007.

[No. L-12012/254/1999-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P. L. NORBERT, B.A., L.L.B., Presiding Officer

(Wednesday the 13th day of June, 2007/
23rd Jyaistha, 1929)

I.D. 185 of 2006

(I.D. 4/2000 of Labour Court, Ermakulam)

Workman :	Shri Devraj G. 35/78, Warrier Cottage Puthempurackal Road, Palarivattom, Kochi-682 025.
Management :	Adv. Shri Ashok B. Shenoy. The Dy. General Manager, Canara Bank, Circle Office, Staff Section (W), Spencer Junction, Thiruvananthapuram Adv. Shri M. C. Sen

AWARD

This is a reference made by Central Government under Section 10 (1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

“Whether the action of the management of Canara Bank in imposition of punishment of discharge from services of the workman Shri Devraj G., Clerk, Account Section, Trichur w.e.f. 4-1-1999 for certain alleged misconducts is legal and justified? If not what relief be workman is entitled for?”

2. The facts of the case in brief are as follows :—

The workman, Shri Devaraj G. was appointed as clerk in Canara Bank at Pulpally Branch. He was charge-sheeted on 20-9-1996 alleging misconduct of remaining absent unauthorisedly, wilfully disobeying lawful and reasonable orders of superiors and acting prejudicial to the interest of the bank. A domestic enquiry was conducted and the workman was found guilty of all the charges. The Disciplinary Authority imposed a punishment of discharge with superannuation benefits. An appeal filed by the workman was dismissed. The workman has challenged the proceedings of enquiry imputing biased mind on the Enquiry Officer and contending that the Enquiry Officer has not complied with the principles of natural justice. He also attacks the findings and questions dis-proportionality of the punishment imposed by the Disciplinary Authority. Therefore he seeks reinstatement in service with back wages, continuity of service and consequential benefits. The management has refuted all the contentions of the workman. According to the management the Enquiry Officer, complied with the principles of natural justice and procedure for domestic enquiry and has conducted a fair enquiry. The findings are supported by evidence. Ample opportunity was given to the workman in the enquiry and he was also given chance to adduce defence evidence. The workman was a habitual absentee. Disciplinary action was taken and punishment was imposed thrice in the past for unauthorized absence. The punishment is proper and proportionate to the misconduct. No inference is called for in the findings of Enquiry Officer and the punishment of disciplinary authority.

3. Since the validity of enquiry was questioned by the workman it was heard as a preliminary point and found that the enquiry was conducted following the procedure and observing the principles of natural justice and enquiry is legal and valid. What remains to be considered are the following points :

- (1) Are the findings sustainable?
- (2) Is the punishment proportionate?

The evidence consists of the oral testimony of MW1 (Enquiry Officer) and documentary evidence of Exts. M1 and M2 (Enquiry Files).

4. Point No. (1) :

Ext. ME-1 is the charge-sheet. The 1st charge is that the workman had applied for leave for 3 months from 6-11-1995 without producing a medical certificate from bank's panel doctor and that he had applied for leave on false ground. Hence his leave for the period from 6-11-1995 for 3 months and extended up to 26-4-1996 was treated as unauthorized and on loss of pay (LOP). This was a misconduct of wilfully disobeying lawful and

reasonable orders of superiors falling under Chapter X1 of Regulation 3, Clause (d) of Canara Bank Service Code. The 2nd charge is that he was a habitual absentee and he was subjected to three previous disciplinary actions and imposition of punishments and repetition of the same misconduct is a gross misconduct within the meaning of Chapter X1, Regulation 3, Clause (1) of the Code. The 3rd charge is that the above conduct of the workman is prejudicial to the interest of the bank falling within Chapter X1, Regulation 3, Clause (m) of the Code. According to the learned counsel for the workman there is no violation of the Leave Rules. The workman had leave at credit. He had applied for leave before he proceeded on leave. Hence he had not disobeyed the instructions of his superior officers. Consequently his actions do not become prejudicial to the interest of the bank.

5. It is not seriously disputed that the workman had been availing leave off and on the ground of illness. He used to apply for sick leave with medical certificate. His illness is said to be Lumbago (pain at the lower back). He was transferred to Pulpally branch of the Canara Bank in 1990. Ext. ME-13 contains leave details. It shows that he had taken LOP for 77 days, AWL 1375 days and he had a credit balance of PL of 16 days, SL 46 days and UCL 39 days as on 14-11-1995. Ext. ME-17 is leave application on LOP for 3 months from 6-11-1995. By Ext. ME-18 bank rejected his application and treated the absence as unauthorized and he was asked to report for duty immediately. A telegram was also sent to him and copy is Ext. ME-19. He did not report for duty. On the other hand he sought extension of leave after 3 months for a period of 15 days on half pay leave/LOP with medical certificate by Ext. ME-21 application. This second application was also not allowed and the absence was treated as unauthorized and the workman was asked to report for duty immediately by Ext. ME-22 telegram and ME-23 letter. He did not report for duty. Again the workman applied for extension of leave on half pay sick leave LOP for a further period of 10 days w.e.f. 21-2-1996 by Ext. ME-25 application. The bank rejected the application and sent a reply treating the leave as unauthorized and asking the workman to report for duty immediately. The copies of telegram and letter are Exts. ME-26 and 27 respectively. Again the workman applied for extension of leave by Ext. ME-29 with medical certificate. The bank rejected the application by Ext. ME-31 letter. Again he applied for leave by Ext. ME-33 with a medical certificate for 25 days. This also was rejected by the bank by Ext. ME-35 letter. Again he applied for leave for one week from 21-4-1996 with a medical certificate (Ext. ME-37 application). That was also rejected by the bank by Ext. ME-39 reply.

6. The 1st application dated 3-11-1995 (Ext. ME-17) was for leave on loss of pay for a period of 3 months from 6-11-1995. According to the learned counsel for the workman an application for leave on LOP need not be

accompanied by a medical certificate. The employee need submit a medical certificate only if he applies on medical ground. The Canara Bank Leave Rules is produced along with the written statement of the management. Leave on LOP is dealt in clause 8 of the Leave Rules. It reads as follows :

- “8. Leave on Loss of Pay (Extraordinary Leave).**
- 8.1. Leave on loss of pay shall be granted only when no other category of leave is due to him/her.
 - 8.2. Leave on loss of pay will not be sanctioned except under exceptional circumstances.
 - 8.3. Leave on loss of pay will not be granted for more than 3 months on anyone occasion and 12 months during the entire period of employee's service. If an employee absents himself beyond this period, his absence is liable to be treated as one without leave and hence on loss of pay besides rendering him liable for initiating appropriate disciplinary action.
 - 8.4. Employees who are sanctioned leave on loss of pay are not eligible for any pay and allowances.”

The aforementioned rule regarding LOP shows that when any other category of leave is available to the employee leave on LOP will not be granted. Moreover it is an extraordinary leave and will be sanctioned only on exceptional circumstances. As on 14-11-1995, as per Ext. ME-13 leave details, he had other categories of leave on credit. Hence, as per rules mentioned above the workman was not eligible to avail leave on LOP. That apart, it was not compulsory for the management to sanction leave on LOP. If the management is not convinced of the reasons stated in the application it is liable to be rejected. In the case of workman in his application Ext. ME-I7 the reasons stated by him are that the bank had denied him eligible leave and salary during his leave and had treated some of the leaves as LOP. If this attitude is continued by the bank, he has no other option than to proceed on long leave without pay to his home town. It is also stated that since it was winter the climate of Pulpally was not suitable to him as he was suffering from lumbago. Hence he sought 3 months' leave on LOP. Considering the past conduct of the workman the bank was not convinced of the reasons stated in the application. Moreover, in the Leave Rules, Clause 1.1 it is mentioned that leaves of all kinds cannot be claimed as a matter of right and the bank reserves the right to refuse or revoke leave of any description. Clause 1.6 says that except casual leave, request for all other categories of leave on medical grounds should be supported by a medical certificate from a Registered Medical Practitioner. Ext. ME-I7 leave application first of all discloses his defiant attitude towards management. The second ground for taking leave is a medical ground. If it is medical ground then, whatever

be the kind of leave one applies for, it should be accompanied by a medical certificate as per Clause 1.6 referred above. It was considering the past conduct of the workman and the reasons stated in the leave application that the bank held that the application, which was not accompanied by a medical certificate, was not proper and hence it was rejected. It was submitted by the learned counsel for the workman that the management was aware of the illness of the workman and they had in fact sanctioned a medical bill, Ext. DE3 in Ext. M1. The fact that once or twice a person was hospitalized or was suffering from an ailment, not necessarily follow that the same illness continues or the intensity of the illness continues to be the same. When the worker began to avail leave quite often, the management began to doubt the genuineness of the medical certificate and the illness. Moreover in the case of Ext. ME-17 leave application, no medical certificate was produced. Therefore the management cannot be found fault with for rejecting Ext. ME-17 application for leave on LOP for a period of 3 months. The workman was asked to report for duty immediately. He did not turn up or try to make arrangements for regularizing his leave. On the other hand he went on applying for extension of leave after the expiry of the period of 3 months. Hence in the first charge it is alleged that the workman wilfully disobeyed the lawful and reasonable orders of his superiors and committed gross misconduct falling within Clause 3(d) of Chapter XI of the Canara Bank Service Code. This action of the management was found to be legal and proper by the Enquiry Officer. No infirmity can be found in the said finding of the Enquiry Officer as it is in tune with the Leave Rules and Service Code.

7. The 2nd charge is that the workman was a habitual absentee. He was proceeded against three times and was punished three times with stoppage of increment for a period of six months without cumulative effect on all the three occasions. The repetition of the misconduct and punishment is said to amount to gross misconduct within Clause 3(1) of Chapter XI of the Code. However it is argued by the learned counsel for the workman that remaining absent unauthorisedly is only a minor misconduct. But in view of the definition of the word ‘habitual’ mentioned in Clause 3(1) the repetition of minor misconduct three times and punishment imposed three times, i.e. punishment of censure or warning or entering adverse remarks in the service records, is a gross misconduct. Clause 3(1) of Chapter XI reads :

“(1) Habitual doing of any act which amounts to “minor misconduct”, “habitual” meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or adverse remarks have been entered against him;”

According to the learned counsel for the workman the definition of “habitual” does not take in any other

punishment other than censure, warning or adverse remarks. In the case of the workman the previous punishments imposed for unauthorized absence, is stoppage of increment for a period of six months without cumulative effect. This cannot be termed as a habitual misconduct and hence cannot be brought under Clause 3(1). It is no doubt true that Clause 3(1) does not mention any other punishment other than censure, warning and adverse remarks. They are minor punishments. Stoppage of increment for a period of six months without cumulative effect is also a minor punishment. However it is not included in Clause 3(1). The rationale could be that when increment is stopped it is a monetary loss that the delinquent suffers. Whereas the punishment of censure, warning and adverse remarks are inconsequential and the delinquent does not stand to lose any monetary benefits. The principle may be that one shall not be vexed twice for the same offence. For the unauthorized absence once the delinquent is punished with stoppage of increment if again that is taken as a basis for imposing another major punishment a second time that may amount to punishment in a second time for the previous offence and also for the subsequent offence. Whereas if the previous punishments were censure, warning or adverse remarks even if a 4th time similar misconduct is committed and if it is converted into gross misconduct the delinquent does not stand to suffer twice. The counsel on both sides were not able to explain the rationale behind the exclusion of other minor punishments from Clause 3(1) of the Code. Going by the provision in Clause 3(1) the stoppage of increment on three occasions cannot be treated as a punishment for habitual misconduct falling within Clause 3(1) of the Code.

8. Moreover, the extension applications were rejected on the ground that medical certificate from bank's panel doctor was not produced. These extension applications for extension of leave after 3 months from the date of expiry of the first application for leave, were submitted on medical ground and they were accompanied by medical certificates, but not from a panel doctor. The bank insisted for medical certificate from bank's panel doctor. This was the reason why those extension applications were rejected. According to the workman, as per Circular No. 499 of 1985 dated 18-12-1985, para 5.2, a medical certificate from a Medical Practitioner or if advised by the bank a medical certificate from a doctor of bank's choice shall be produced along with the application for sick leave. The provision says that when the bank directs the employee to obtain medical certificate from bank's panel doctor the bank will pay the fees of the doctor. Para 5.2 reads:

"Sick leave may be availed of only on production of Medical Certificate from a Registered Medical Practitioner/Hospital acceptable to the bank even if it is for a day. The bank may at its discretion advise the employees to obtain a Medical Certificate from

a doctor of Bank's choice. In such cases the bank will pay the fees of the doctor."

9. According to the workman he was not paid doctor's fees as prescribed in the Circular when he was asked to obtain a medical certificate from a panel doctor. Exts. ME-41 to 43 are the instructions of the bank asking the workman to consult panel doctor. Ext. ME-43 is a letter dated 14-5-1990 addressed by the bank to the workman. He was asked to get medical certificate from a panel doctor and also meet the consultation fee payable to the doctor by himself only. Ext. ME-42 is another similar letter of the bank dated 16-6-1990 containing the same instructions. Ext. ME-41 is another similar letter dated 13-3-1992 instructing the workman to obtain medical certificate from a panel doctor and the letter is silent about the consultation fee. Thus the instructions in Exts. ME-42 and 43 regarding payment of consultation fee remains the same. As per those letters the workman himself has to pay the consultation fees. This is against the Circular, Para 5.2 referred above. The Circular is produced along with the written statement as Annexure IV. In the judgement of Hon'ble High Court of Kerala in O.P. 2962/94 filed by union against the management it was observed that in case of consultation of bank's panel doctor the employee will be entitled to get doctor's consultation fees and T.A. as per norms of the bank. The judgement is produced along with the written statement as Annexure-III. Therefore the bank was bound to follow the Circular which mandates the bank to pay doctor's fees. The instruction in Exts. ME-42 and 43 is against para 5.2 of the Circular. Being an instruction against the norms and the Circular it cannot be considered as a lawful and reasonable order of superior officers. The workman was not bound to follow the said instruction which was not lawful. On this ground also it cannot be said that there is any disobedience of the direction of superior officers and therefore guilty of second charge.

10. The 3rd charge is that the conduct of the employee is prejudicial to the interest of the bank falling within Clause 3(m) of Chapter XI of Service Code. According to the learned counsel for the workman, when there is a specific clause with regard to a specific misconduct or offence, a general clause with regard to that conduct cannot be invoked and the employee charged for the offence in a general clause. According to him for willful disobedience of lawful and reasonable orders, Clause 3(d) of the Code is invoked and for habitual absence, Clause 3(1) of the Code is invoked. These two misconducts are said to be prejudicial to the interest of the bank and that is why the 3rd charge is made. The specific offence is under Clause 3(d) and 3(1). The charge under Clause 3(m) is a general clause regarding misconduct. According to the learned counsel since the workman is charged on specific grounds there is no point or propriety in invoking a general clause and prosecute him for that offence. The argument is not without force if the *maxim generalia specialibus non*

derogant is applied. The special provisions or clauses will prevail over the general clauses. It is true that the workman had not obeyed the direction of the management to report for duty when his first application for leave for 3 months was rejected. But then that is taken care of by Clause 3(d) of the Code. It is not necessary to bring it under Clause 3 (m). Therefore the 3rd charge also cannot stand. The finding of the Enquiry Officer that the workman is guilty of the 3rd charge is also not sustainable.

11. It was also submitted by the learned counsel for the workman that the workman had enough leave at credit and there was no justification in rejecting leave applications of the workman. The learned counsel relies on statement of MW3 in Ext. M1 to support his contention. The proceedings of 27-8-1997 at page 3 shows that MW3 has admitted that his sick leave application was rejected not because he had no sick leave at credit. Moreover Ext. ME-13 also discloses that the workman had leave at credit. But that was not the reason why his leave applications were rejected. The extension applications were rejected because the workman had not produced a medical certificate from bank's panel doctor. But I have found that he was not bound to follow the direction of the management as it was not a lawful and reasonable direction. But the first leave application on loss of pay for a period of 3 months was rejected, as already mentioned, because bank was not convinced of the reasons stated for proceeding on long leave and as per Circular it was to be accompanied by a medical certificate if the leave was availed on medical ground. This the workman did not follow and his application was rejected in accordance with law and he was directed to report for duty. But he did not obey the direction. Thus he willfully disobeyed lawful and reasonable orders of his superior officers falling under clause 3 (d) of Chapter XI of the Code and is guilty of the 1st charge as rightly found by the Enquiry Officer. However, charges 2 and 3 cannot stand. The point is answered accordingly.

12. Point No. (2) :

The punishment imposed is discharge with superannuation benefits. The misconduct under Clause 3(d) of Chapter XI is a major misconduct. The question is, whether the punishment is disproportionate. According to the learned counsel for the workman, the claimant entered service in Laxmi Commercial Bank in 1979. It was taken over by Canara Bank in 1985. He was discharged from service in 1998. He has six years more in service as of now. He also submitted that the bank was aware that the workman was sickly. That is why one of his medical bill (Ext. DE-3 in Ext. M1) dated 2-11-1995 was sanctioned by the management. In spite of that the bank took harsh step of discharging him from service. The past record of the workman shows that he had been absent on several occasions for long and short periods. Thrice disciplinary action was taken and punishment of stoppage of increment

was imposed thrice. Despite that there was no change in his attitude. Ext. ME-17 application dated 3-11-1995 gives an indication that he did not relish the attitude of the management in denying his leave applications and treating some of the applications as one on LOP. Therefore he stated in the leave application that he was constrained to go on long leave without pay. Thus the medical cause alone was not the reason for taking long leave. He was unhappy over the transfer to Pulpally. That also prompted him to avail leave quite often. Considering these circumstances I do not think that the punishment of discharge with superannuation benefits is in any way harsh and disproportionate to the misconduct.

13. In the result, an award is passed holding that the findings of the Enquiry Officer and punishment imposed by Disciplinary Authority are valid and sustainable. No interference is called for. The parties will suffer their respective costs. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 13th day of June, 2007.

P. L. NORBERT, Presiding Officer
APPENDIX

Witness for the Workman :

Nil.

Witness for the Management :

MW1—Shri V.N. Vasudevan Namboothiri—10-1-2007.

Exhibit for the Workman :

Nil.

Exhibit for the Management :

M 1 and M2—Enquiry Files.

नई दिल्ली, 26 जून, 2007

का.आ. 2000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू इंडिया एश्योरेन्स कं. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 62/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-06-2007 को प्राप्त हुआ था।

[सं. एल-17012/11/2001-आई आर (बी.-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S.O. 2000.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure

in the Industrial Dispute between the management of New India Assurance Company Ltd. and their workman, received by the Central Government on 26-06-2007.

[No. L-17012/11/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 1st June, 2007

PRESENT

Shri A. R. SIDDIQUI, Presiding Officer

C. R. NO. 62/ 2001

I PARTY

Shri V.G. Ankalkoti,
S/o Shri Gurushantappa,
No. 144, 13th Main,
Nobonagai,
Bannerghatta Road,
Bangalore-560 076.

II PARTY

The Regional Manager,
New India Assurance
Company Ltd.
NIACL, 2B, Unity Building,
Bangalore-560 027.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-17012/11/2001-IR (B-II) dated 3rd August, 2001 for adjudication on the following schedule :

SCHEDULE

"Whether the management of New India Assurance Company Limited is justified in terminating the services of Shri V.G. Ankalkoti, former Assistant vide order dated 12-12-1998 ? If not, what relief the workman is entitled to?"

2. A charge sheet dated 29-7-1997 along with statement of imputation came to be issued to the first party in the following terms :

"Mr. V.G. Ankalkoti, Assistant working at Bangalore D.O. III during the year 1994 to 1997 had committed certain irregularities/misconduct in terms of General Insurance (Conduct, Discipline and Appeal) Rules 1975. He/She is informed that allegations on which the enquiry is proposed to be held or set out in the enclosed statement of imputation as per Annexure A and Articles of charges framed on the basis of allegations contained in Annexure A are specified in the statement of charges marked as Annexure B. The list of documents by which and the list of witnesses by whom the articles of charges have to be sustained are enclosed as Annexure C & D respectively to the memorandum.

Mr. Ankalkoti is further informed that he/she if he/she so desires take the assistance of any other co-employee to assist him/her in presenting the case

before Enquiry Authority in the event of oral enquiry being ordered. Mr. Ankalkoti is hereby required to submit the undersigned a written statement of defence within 15 days from the date of receipt of the Memorandum.

Mr. Ankalkoti is informed that the enquiry will be held only in respect of the charges and allegations as are not admitted. She/He should, therefore, specifically admit or deny each of the charges and each of the allegations which are not specifically denied will be deemed to be admitted. Mr. Ankalkoti is further informed that if the statement of defence is not received on or before the date specified, the enquiry is liable to be held without waiting for his written statement of defence. Mr. Ankalkoti is hereby informed that he/she shall not bring or attempt to bring any political or any other outside influence pertaining to his/her service under the Company any representation is received on his/her behalf, from any other person in respect of any matter dealt within these proceedings, it will be presumed that is aware of such representation and that is has been made at his instance and action will be taken against him/her for violation of these instructions. The receipt of the memorandum may be acknowledged by Mr. V.G. Ankalkoti."

Articles of charges

Mr. V.G. Ankalkoti, is charged for the following acts of omission and commission :

- (1) Remaining on unauthorised absence from 19-8-1996 till date without any regard to exigencies of office work, leave rules of the company as his leave credit.
- (2) Willful insubordinate/disobedience in not obeying the lawful orders of his superior conveyed vide letter dated 20-9-1996 and 13-11-1996 to report for duty.
- (3) Furnishing false information/misrepresenting to the company that his absence from 19-8-1996 continuously is due to medical reasons.
- (4) Non-submission of original housing loan documents as per rules of the company and undertaking given by him, inspite of several reminders and a lapse of two and a half years, with intention to deceive the company.
- (5) Fraudulently entering into an agreement to sell the said property with the intention of making profit out of the loan availed from the company, knowing fully well that the company has full charges of the property till the loan is repaid.
- (6) Perpetuating fraud against the company by issuing cheque for Rs. 3000 with full knowledge that there was no sufficient funds in his account, which is a criminal offence involving moral turpitude.

- (7) Not vacating the company flat despite availing housing loan and getting notice from the company.
- (8) Engaging directly/indirectly in business of fitness and investment consultancy, couriers, share and stock brokering, real estate, auto consultancy without previous sanction of the Company.
- (9) Acting in a manner prejudicial to the interest of the company as stated above.
- (10) Convassing support for business purportedly owned/managed by his wife viz. M/s. Sneha Enterprises, M/s. Koti Couriers and M/s. Aishwarya Real Estate.

The above acts of omission and commission of Mr. Ankalkoti are in violation of Rules 3(1)(i), (ii), (iii) 4(1), (5), (7), (8), (16) and Rule 6 of General Insurance (Conduct, Discipline and Appeal), Rule 1975."

3. The first party workman in response to the charge sheet submitted his explanation dated 18-9-1997 and the Disciplinary Authority not being satisfied with the explanation offered by the first party, ordered Domestic Enquiry into the charges of misconduct levelled against the first party. The first party attended and participated in the enquiry proceedings defending himself personally and on the conclusion of the enquiry proceedings submitted his written brief on 10-9-1998 and thereupon, the enquiry officer submitted his enquiry report holding the workman guilty of all the charges of misconduct levelled against him in the aforesaid charge sheet. He was furnished with enquiry report seeking his comments thereon and his representation vide letter dated 5-10-1998 once again not been found satisfactory, the disciplinary authority by its order dated 28-12-1998 passed the impugned punishment order dismissing him from the services of the management company. The first party aggrieved and preferred an appeal dated 1-1-1999 against the dismissal order and that came to be rejected vide the Appellate Authority order dated 20-4-1999. The first party thereupon raised the dispute before the conciliation officer concerned and the conciliation having been failed resulted into the present reference.

4. The first party by way of his Claim Statement challenged the enquiry proceedings as opposed to the principles of natural justice, enquiry findings as perverse and dismissal order passed against him as unjust and illegal.

5. The management by its counter statement maintained and asserted that the enquiry proceedings held against the first party were in accordance with the principles of natural justice, findings of the enquiry officer were supported by sufficient and legal evidence and that order passed by the Disciplinary Authority in dismissing him from service was just and legal keeping in view the gravity of the misconduct committed by him.

6. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this tribunal took

up the above said question as preliminary issue in the first instance. During the course of trial of the said issue, the management examined the enquiry officer as MW1 and got marked 21 documents during his deposition. The first party examined himself by way of rebuttal and after having heard the learned counsels for the respective parties this tribunal by order dated 25-7-2005 recorded a finding to the effect that the Domestic Enquiry conducted against the first party by the second party is fair and proper and the matter came to be posted to hear the parties on merits of the case. In the meanwhile on the application filed by the first party to permit him to give evidence on the point of gainful employment, he was permitted and accordingly was examined. There was no evidence as such adduced by the management on the said point. Then, once again the matter was posted for arguments on merits and after having heard the learned counsels for the respective parties, the case is posted this day for award.

7. As far as the case of the first party on merits in challenging the enquiry findings as made out at paras 3 to 5 of the Claim Statement is as under :

"That each of the charges levelled against the workman are totally unfounded. As regards the charge No.1 absence from duty, the first party workman has in fact submitted relevant documents to prove that his absence was due to fracture of his left hand. The medical certificate issued by the doctor in this regard was also furnished by the first party workman. It is on account of this factual position the first party workman could not attend his duties and was unable to attend the office. Vide letter dated 28th September 1996 along with the Medical Certificate the first party workman had requested for leave. The leave letter along with medical certificate were sent by the first party workman by RPAD. It is therefore, required to be stated that the first party workman had kept the management informed about the requirement of leave on medical grounds. It is totally false to contend that the first party workman misrepresented with regard to his absence from duty. It is also relevant to mention that the case of the first party workman was referred to the panel doctor who in turn on examination opined that the first party workman required rest. In this view of the matter each one of the charges with regard to alleged absent from duty cannot be sustained with regard to the charge of non-submission of original housing loan document after the registration, it was submitted by the first party workman that the documents were received by the first party workman from the office of the Sub-registrar during October 1996 even though the document was registered on 10-11-1995. It is a matter of common knowledge that in Bangalore for the last about 8 years, the registered documents are being sent to the parties after long lapse of time which in fact is on account of administrative problems faced in the office of Sub-registrar. This was duly submitted

by the first party workman. It is submitted that as per charge No. 5 the first party workman was alleged to have entered into an agreement to sell the property in respect of which the finance was advanced by the Company. It is submitted that on account of heavy outside debts incurred by the first party workman he had to enter into an agreement to sell the property. It is submitted that the property was registered for Rs. 5.5 lakhs though loan sanctioned was only Rs. 1,95,000. Apart from this the first party workman had to spend almost a lakh of rupees towards registration charges and also immediate repair and other maintenance charges. As regards, the charge pertaining to bouncing of the cheque issued by the first party workman in favour of the company for a sum of Rs.3000, it is submitted that in respect of this charge the first party workman was charge sheeted and this ended in imposition of a penalty of deduction of basic pay salary by one stage as per the order dated 11-12-1997 nevertheless this charge was once again repeated against the first party workman. With regard to the allegation of either directly or indirectly engaging in a business and also canvassing support for business owned/managed by his wife, it is submitted that the wife of the first party workman is the sole proprietor of Sneha Enterprises, Koti Couriers and Aishwarya Real Estate. None of these firms were either directly or indirectly owned in a business similar to that of the business carried on by the second party management. In fact these firms are fully controlled and handled by the wife of the first party workman. Merely because the first party workman had helped his wife in running of these establishments but without causing any hindrance to his family duties under the second party management, it is totally incorrect to contend and made an allegation against the first party workman that he had indulged in the business without previous sanction of the company. After the first party workman denied each one of the charges leveled against him, as already stated enquiry was ordered. After the conclusion of the enquiry first party workman was dismissed from service which is totally unjust and arbitrary. That the procedure and the manner and the method in which the enquiry was conducted against the first party is totally opposed to the rules of natural justice. The enquiry was not conducted in an objective manner. The first party workman was not given of fair opportunity to fully cross examine the management witnesses, the copy of various documents on which the employer placed reliance in support of the charges against the first party workman during the time of enquiry were not furnished in advance so as to enable the first party workman to study those documents and put forth his case effectively. Having regard to the proceedings of the enquiry it is submitted that the enquiry is opposed to the rules of natural justice and contrary

to the procedure contemplated under the rules. In this view of the matter the penalty imposed on the first party workman cannot be sustained. That the findings recorded by the enquiry officer cannot be sustained. In his final findings the enquiry officer has stated that charge No. 1 to 7 and 9 have been proved by acceptance of the charges by the charted employee and that 8 and 10 have been clearly proved during the domestic enquiry. As regards the so-called acceptance that the charge as contended by the enquiry officer it is submitted that the first party workman has not accepted the charge. However, he has given explanation with regard to certain acts alleged against him his explanation has not been properly understood and read by the management which resulted in perverse finding being recorded by the enquiry officer to the effect that the charges are proved consequent upon admission by the charged employee. Having to the explanation given by the first party workman both in reply to the charge sheet and also during the time of enquiry, it is manifestly clear that the same would not amount to any admission in unequivocal terms. At any rate, the same is not an unqualified admission. Hence the enquiry officer's findings being perverse, the penalty imposed on the first party workman cannot be sustained."

8. The management by its Counter Statement while meeting the above said contentions of the first party at paras 5 to 10 contended as under :

"That during the year 1996, he was issued with a Memorandum of charges and after due process, he has been awarded with a penalty of reduction in his Basic Salary by one stage permanently for his unauthorised absence for the period of 173 days during the year 1995 and he has been advised to desist from remaining on unauthorised absence in future. For his unauthorised absence during the years 1996 and 1997, though he has submitted medical certificate to show that his absence was only on medical grounds, the charge of dual employment was found established due to his frequent and continuous absenteeism. This aspect was further evidence from the report of Vigilance Officer that when the Vigilance Officer has visited the office of M/s. Sneha Enterprises (business establishment in the name of his wife) the first party workman was transacting the business.

That regarding the charge of non-submission of housing loan documents, the first party workman has admitted in the representation that he has received the registered documents from the office of the Sub-registrar during October 1996. Despite various letters, he has not submitted that documents to the company. Had he been a law abiding person, he would have submitted the documents to the Company on receipt of the same from the Registrar.

Instead of submitting the documents to the company, the first party workman has entered into an agreement to sell the house. The first party workman has never approached the company about his problem of heavy outside debts, the reason given by the first party workman in the representation to sell the house. As per the housing loan sanction order and the letter of undertaking submitted by the first party workman with regard to the housing loan, he does not have the right to sell the house without obtaining prior permission from the company. The company would have considered granting permission to the first party workman to sell the house if he would have approached the company with his genuine problems. In some specific cases, the company has allowed the employees to close the housing loan by selling the house and deposit the proceeds to the company.

That the first party workman was staying in the company quarters. As per rules, if any employee constructed a house or purchased a house, by availing housing loan from the company, in the place where he stays in the company quarters, he is not entitled to stay/continue in the company quarters. Hence the first party workman was issued with various letters to vacate the quarters. But the first party workman had continued to stay in the company quarters till the rejection of his representation by the CMD. Regarding the charge of bouncing of cheque issued by the first party workman, he was issued with a charge sheet for his misconduct and dishonesty for altering the medical bills and submitted an inflated mediclaim. Actually the bill value was only Rs. 480 but the first party workman has altered the bill for Rs. 3,480 and taken the amount towards mediclaim. When it was found and charge sheet was issued, the first party workman has accepted the charges and agreed to repay the excess amount of Rs. 3,000 drawn by him. He has issued a cheque for Rs. 3000 and the same bounced which is a serious criminal offence. At the insistence of the second party he paid back the amount at a later date. For the above act of misconduct of first party workman, a penalty of reduction of his Basic salary by one stage permanently was imposed.

That the charge of engaging directly/indirectly in business without prior sanction, this charge has been amply brought out and proved at the time of enquiry. From the visiting cards of Koti Courier (business establishment in the name of his wife) where the first party workman's name was appearing, it was proved that he is directly or indirectly engaged in a business. The first party workman had represented his wife in OS No. 518/1996 filed against M/s. Sneha Enterprises (business establishment in the name of his wife) on 30-1-1996 and paid Rs. 10,000 in cash and Rs. 24,447 *vide* cheque and on the same date he was absent for

duties. From the above acts of first party workman it was found that he has engaged in other business by neglecting his office work knowing well that he has no leave to his credit.

That Paras 3 & 4 of the representation wherein he has stated the enquiry was not conducted in a fair manner and that he has not accepted the charges 1 to 7 and 9 of the enquiry report. It is submitted that the first party workman did not object in his appeal nor in his memorial about the lapses in the enquiry by raising such objections. Now it is clear that this is an after thought and he should not be permitted to do that at this stage where his appeal and memorial is disposed off. Regarding the conduct of the enquiry, the first party workman was given ample opportunity to put forth his case and cross examine the management witnesses. As per CDA rules, there is no necessity to show the documents listed with the charge sheeted employee in advance. It is submitted that the enquiry was conducted in a fair manner and as per rules only. No injustice is done to the first party workman as mentioned by him in the representation."

9. Now, therefore, in the light of the finding recorded by this tribunal to the effect that the DE conducted against the first party by the Second Party is fair and proper, the only two relevant questions to be considered would be "whether the findings of the enquiry officer in holding the workman guilty of the charges suffered from perversity and if not, whether the punishment of dismissal awarded against him was not proportionate and incommensurate keeping in view the gravity of the misconduct alleged against the first party."

10. Learned counsel, Shri VSN on behalf of the first party vehemently argued that charges 1 to 3 framed against the first party are interrelated and interdependent and under these 3 charges the only fact which was to be substantiated by the management was whether the first party remained unauthorisedly absent from 19-8-1996 till the date charge sheet was issued. His contention was that the first party remained absent from duty for the period mentioned in the charge sheet on medical grounds and the very management records produced during the course of enquiry will disclose that he had sent various medical certificates, prescription slips with regard to the medicines and the medical bills but unfortunately his request to grant special leave for three months on medical grounds was not acceded to and therefore, it cannot be said that it was a case of unauthorised absence. Coming to Charges No. 4 & 5, learned counsel submitted that the first party failed to submit original housing loan documents as the registered documents, itself, were not received by the first party well within time. He submitted that there was no violation of any rule or regulations of the management company when the first party executed an agreement of sale with respect to the house he purchased taking loan from the management company as the sale transaction could not be said to have

complete unless sale deed was registered. With regard to the charge No. 6 learned counsel submitted that the first party had already been imposed penalty of withholding of his one increment earlier to the present charge sheet. As against charge No. 7 he submitted that the first party never came in possession of the house in question so there was no point in vacating the quarter occupied by him allotted by the company. On charges 8 & 10, learned counsel submitted that there was no law prohibiting the spouse of an employee assisting or extending his/her help into the business affairs conducted by other spouse. He submitted that the various business activities mentioned in the charge sheet were the businesses run by the wife of the first party in her own name and merely because he happened to have signed some attachment order or was found sitting in the Cabin of the business premises run by his wife, it cannot be said that he directly or indirectly was engaged in the above said business run by his wife. Learned counsel therefore, submitted that none of the charges leveled against the first party has been established by sufficient and legal evidence and therefore, findings suffered from perversity. On the point of quantum of punishment learned counsel submitted that the charges of misconduct as leveled against the first party do not involve moral turpitude so as to term them as grave in nature and that the management did not take into consideration the unblemished services rendered by the first party for about a period of more than 27 years while imposing the extreme punishment of dismissal and therefore, punishment was not proportionate to the gravity of the charges.

11. Whereas, learned counsel, Shri Venkatesh representing Shri PSS on behalf of the Management supported the findings of the enquiry officer. His contention was that Charges No. 1 to 7 & 9 since had been admitted by the first party during the course of enquiry proceedings, they were held to be proved by the enquiry officer based on those admissions and whereas, charges No. 8 & 10 were very much proved by the management evidence as could be read from the findings of the enquiry officer, itself. He submitted that on these two charges MW1, Vigilance Officer has given his statement before the enquiry officer and his statement remained to be shaken during the course of his cross examination on behalf of the first party. He submitted that not a single suggestion was made to MW1 challenging his testimony except to suggest that whether he obtained any letter in writing from one Mr. Ramesh and Mr. Hafeez with regard to the oral statement given by them as deposed in his examination chief. He submitted that the cross examination to MW1 infact would reveal that the first party did not dispute the statement made by him in his examination chief on the said two charges. Learned counsel argued that the first party for the first time in his claim statement as an after thought has come out with the statement that he infact did not accept or admit charges 1 to 7 and 9 and that the explanation offered by him has been misread and misconceived by the enquiry officer in coming to the conclusion that he admitted those charges. He

submitted that the very explanation given by the first party to the charge sheet will make it clear that he did not dispute the truth of the allegations made against him except to give his own explanation as to under what circumstances it happened. He did not challenge the findings of the enquiry officer on the points either in his comments on the enquiry report nor when he preferred an appeal challenging the dismissal order. He took the court through the proceedings of enquiry dated 21-7-1998 to speak to the fact that after the management evidence was closed, the enquiry officer once again asked the first party whether he accepts or denies the charges leveled against him in the light of the oral and documentary evidence produced by the management and to that answer given by the first party was that he accepts all charges except charges No. 8 & 10 and that he has no evidence by way of defence in respect of Charge No. 8 & 10. Therefore, learned counsel submitted that the contention now taken by the first party that he did not accept any of the charges is an after thought and misleading. Therefore, learned counsel submitted the aforesaid two charges have been proved by 'sufficient and legal evidence and other charges by admission. Learned counsel cited the following six rulings in support of his arguments.

1. 2001(Vol-91)FLR 526(Bombay)
2. 1996 LAB IC 754(SC)
3. 1999 LLR 232(Bom)
4. 2002(93)FLR 347(Bom)
5. 1999 ILLJ 1173(P&H)
6. 1987(Vol.70) FJR 372(Delhi).

12. After having gone through the records, I find substance in the arguments advanced for the management. Now, first of all coming to the question whether the first party admitted the charges 1 to 7 and 9 during the course of enquiry. As noted above, the very proceedings of the enquiry dated 21-7-1998 are very clear and vocal on the point. These proceedings of the enquiry, where under, the first party admitted the charges except charges No. 8 & 9 bear the signature of the first party. It is to be noted that these proceedings of enquiry have not at all been challenged by the first party either in the claim statement or subsequent thereto. It is not his case that those proceedings were recorded without his knowledge or that he did not sign those proceedings. Therefore, in the face of those proceedings the first party now cannot be allowed to contend that he did not admit those charges. That apart, as could be read from the averments of the first party at Para 3 of the Claim Statement noted above, he has not challenged the aforesaid allegations made against him. With regard to the charge of his unauthorised absence his contention was that he remained absent from duty on medical grounds and that his application seeking special leave for three months was not sanctioned by the authority concerned for no good reasons. With regard to the non submission of original housing loan documents after the registration, his only contention was that he received that

during the month of October 1996 though document was registered on 10-11-1995. It has come on record that even as on the date the enquiry was being conducted against him he failed to produce those original documents to the management company, as per the undertaking given by him while obtaining housing loan from the company. With regard to the charge that he agreed to sell the property without prior permission of the management, he did not dispute the fact again but with a rider that he was under financial crisis and therefore, agreed to sell the property. With regard to the charges No. 8 & 10 he contended that it is his wife who runs the business and is the sole proprietor of Sneha Enterprises, Koti Couriers and Aishwarya Real Estate and that he did not engage directly or indirectly in running the said business. He contended that merely because he helped his wife in running those establishments but without causing any hindrance to his official duties, it cannot be said that he had indulged himself in the business without previous sanction of the company. Therefore, as could be read from the aforesaid averments of the first party which are in line with the explanation offered by him to the charge sheet, it cannot be said that the first party ever denied the allegations made in the charge sheet leveled against him. Now, coming to the charges No. 8 & 10. As noted above, the Vigilance Officer has been examined during the course of enquiry as MW1 and he gave his statement in detail with reference to the complaint the management received from one Mrs. Amrutha Bai. His statement to the effect that the said Amrutha Bai who obtained the money decree against the wife of the first party, when, came to execute the attachment order and it is the first party who paid a sum of Rs.10,000 towards the money decree and agreed to pay the balance amount of Rs.24,000 and odd towards the final settlement of the decree amount has not at all been challenged by the first party in the cross examination of MW1. Infact, the first party admitted the above said statement of MW1 and his explanation on this point was to the effect that when Smt. Amrutha Bai came to his house with the order of attachment along with his wife he signed the attachment order making payment of Rs.10,000 agreeing to pay balance amount of Rs.24,000 and odd as his wife was not there. This statement of the first party on its face itself was self conflicting to say that Smt. Amrutha Bai came to the house along with his wife and he signed the attachment order and paid the amount in the absence of his wife. It is not in dispute that when the said execution order for attachment of the property of M/s. Sneha Enterprises for the recovery of an amount of Rs. 34,000 and odd was to be executed on 30-1-1996, the first party did not attend the office on that date by submitting his CL application. The fact that the first party was found sitting in the office of M/s. Sneha Enterprises and was transacting business on his when MW1 visited the said business premises again has not been disputed by the first party and he has come out with the explanation that when was questioned by MW1 as to why he was sitting there, he replied saying that he was on sick leave. The statement of MW1 that at that time the wife of the first

party was not to be found in the office is again not disputed by the first party. Therefore, keeping in view the statement of MW1 coupled with the documents, enquiry officer rightly came to the conclusion that the first party was running a business in the name of his wife. Relying upon the documents at Ex.M14, enquiry officer rightly observed that the business cards of Koti Couriers and Aishwarya Real Estates and Ankalkoti instead of mentioning either Shantha Ankalkoti or Mrs. Ankalkoti which should have been in the normal course, if the wife of the first party was handling those businesses, go to reveal that it is the first party who was actually handling those businesses in the name of his wife. As seen above, the findings of the enquiry officer on these two charges infact, have not been challenged by the first party in his claim statement at para 5 where under he just challenged the fact that he did not accept the other charges of misconduct leveled against him. He whispered no single word as to why the findings of the enquiry officer on charges 8 & 10 suffered from any factual or legal infirmities so as to term them as perverse. Therefore, keeping in view the evidence brought during the course of enquiry in establishing the charges of misconduct leveled against the first party except charge No. 6 for which the first party has already been punished earlier to the charge sheet, it cannot be said that there was no sufficient and legal evidence to establish the other charges of misconduct leveled against the first party. The explanation offered by the first party to the charge sheet, his averments in the claim Statement, the defence taken by him during the course of enquiry not at all disputing the statement of MW1 of Charges 8 & 10 read with the reasonings given by the enquiry officer, by no stretch of imagination, it can be said that his findings holding the workman guilty of the charges suffered from perversity in any way. Therefore, it is to be held that charges of misconduct leveled against the first party except Charge No. 6 have been very much proved against him during the course of enquiry and the findings of the enquiry officer are valid and legal not to be interfered at the hands of this tribunal.

13. Now coming to the question of quantum of punishment. The principle laid down by the Bombay High Court in the case reported in 2001 (Vol. 91) FLR 526 (Bombay) - Union Bank of India Vs. K.K. Salian, cited by the management read to the effect that in the cases of misappropriation, cheating, carrying on business without permission, issuing cheques without balance and acting in a manner prejudicial to the interest of the bank proved against the delinquent, the dismissal order passed against him will be justified. However, in the instant case there is no charge of cheating and misappropriation as such leveled against the first party and that the charge of issuing cheques without sufficient balance as noted above, has been dealt with against the first party earlier to the present charge sheet. Now, the only charges of misconduct which remain on record are with respect to the unauthorised absence of the first party and the other charges as mentioned above involving no moral turpitude. It is not in

dispute that the first party had rendered unblemished service of about 27 years as on the date he was dismissed from the service. Of course he was once punished for his unauthorised absence from duty earlier to the chargesheet. Therefore, keeping in view the nature of the charges leveled against the first party, his past records and the period of services he rendered with the management, it appears to me that ends of justice will be met if the punishment of dismissal passed against the first party is converted into the punishment of his Compulsory Retirement from service (he was dismissed from service and not terminated from service as indicated in the reference schedule). Hence the following award.

AWARD

The order of punishment of dismissal passed against the first party is hereby replaced by the order retiring him Compulsorily from service w.e.f. from the date of the impugned punishment order. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 1st June, 2007)

A. R. SIDDIQUI, Presiding Officer
नई दिल्ली, 26 जून, 2007

का.आ. 2001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 13/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-6-2007 को प्राप्त हुआ था।

[सं. एल-12011/156/2004-आई.आर. (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th June, 2007

S.O. 2001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Vijaya Bank and their workmen, which was received by the Central Government on 26-6-2007.

[No. L-12011/156/2004-JR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 23rd May, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 13/2005

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the management of Vijaya bank and their workmen.]

BETWEEN

The Joint Secretary, Vijaya Bank Workers Organisation I Party/Claimant

AND

The Assistant General Manager, Vijaya Bank, R.O. Chennai II Party/Management

APPEARANCE

For the Claimant : Mr. S.D. Srinivasan,
Authorised Representative.

For the Management : Mr. M. Dinesan,
Authorised Representative

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-12011/156/2004-IR(B-II) dated 4-1-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

“Whether the action of the management of Vijaya Bank, Chennai in imposing the punishment of reduction to a lower stage in the scale of pay by two stages for a period of one year with cumulative effect upon Shri V. R. Meyyappan Special Assistant is legal and justified? If not, what relief the workman is entitled to?”

2. After the receipt of the reference, it was taken on file as I.D. No. 13/2005 and notices were issued to both the parties and both the parties entered appearance through their authorised representatives and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner Union in the Claim Statement are briefly as follows:—

The Petitioner Union espouses the cause of Sri V. R. Meyyappan who is working as special assistant at Karaikudi branch of the Respondent/Bank. The said employee was served with chargesheet dated 23-5-2002 for alleged acts of misconduct said to have committed by Mr. V. R. Meyyappan. There were eight charges framed against him and out of them one under minor misconduct and others were major misconducts. In response to the same, the concerned employee requested the Disciplinary Authority to accord permission to inspect certain documents to take copies of necessary, in order to reply the charge sheet. But the Disciplinary Authority by his letter dated 7-6-2002 declined the employee to inspect the documents. Again, the concerned employee has given representation on 18-6-2002 quoting guidelines issued by Head Office. Since the Respondent has not given any reply to the letter and since permission to inspect the documents

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was denied, he has submitted his explanation. But surprisingly by a letter dated 22-6-2002 which was received by the employee after 26-6-2002 permitting the employee to inspect and take copies of documents. But even before that date, he has given the reply. Any how, he has submitted a letter to Branch Manager, Karaikudi quoting permission of Disciplinary Authority to allow him to inspect the documents. But to his surprise, the Branch Manager, Karaikudi through his letter dated 10-7-2002 refused permission to inspect the documents and insisted specific reasons to inspect the documents. Again, the concerned employee has applied through his letter dated 20-7-2002 for inspecting the documents, but it was denied by the Disciplinary Authority and the enquiry was conducted against the concerned employee on 26-8-2002. The valid records called for by concerned employee and his defence representative were disallowed with the reason that the same were irrelevant. Further, the change of office and person as Disciplinary Authority was not intimated to the concerned employee. After the submission of the report of Enquiry Officer and after the representation made by the concerned employee, the Disciplinary Authority proposed the punishment of reduction to a lower stage in scale of pay by two stages for a period of one year with cumulative effect. The concerned employee submitted his reply to 2nd show cause notice requesting for personal hearing, but the final order was passed without according personal hearing on 28-1-2003. Even the appeal preferred against the said order was rejected by the Appellate Authority. Hence the Petitioner union raised dispute before labour authorities. The Disciplinary Authority has rejected the concerned employee's request which is against the provisions of Bipartite Settlement and principles of natural justice. The Branch Manager did not allow the concerned workman to exercise his right permitted by the Disciplinary Authority. The same branch official was one of the main witnesses of Respondent/Management in the domestic enquiry. The Enquiry Officer has also stated and asked the concerned employee about the relevancy of documents sought for. Thus, a fair and reasonable opportunity was denied to the concerned employee. More particularly, valid document namely hand delivery book which was sought for by the defence to disprove the charge was not produced. Further, the Enquiry Officer has not considered the evidence given by the witnesses and he has come to a perverse view stating that charges framed against the concerned workman have been proved. Further, the Disciplinary Authority proposed the punishment which was not stated in the Bipartite Settlement which clearly proves that there was no application of mind to the facts and circumstances of the case while arriving at the findings on the part of Disciplinary Authority. Even though as per para 12 (a) of Memorandum of Settlement dated 10-4-2002 on disciplinary matters, the concerned workman requested for personal hearing, the request for personal hearing was denied and declined by the Disciplinary Authority. The

Appellate Authority was the same authority who during his capacity as Disciplinary Authority served the chargesheet to concerned workman and denied permission to have access of documents etc. hence, the dismissal of appeal by the same authority who served chargesheet on the concerned workman is total and clear violation of principles of natural justice. Thus, it is clearly established the prejudiced and predetermined mind of Appellate Authority and hence, grave miscarriage of justice has been done. The punishment imposed is not one of the punishments as enumerated in Memorandum of Settlement dated 10-4-2002 on disciplinary matters. Hence, the Petitioner union prays for an award to be passed in their favour.

4. As against this, the Respondent in its Counter Statement contended that concerned employee Sri V. R. Meyappan joined the service of Respondent/Bank as clerk on 18-12-1974 and while working as special assistant at Karaikudi branch it was reported that he has committed certain acts of misconduct, like refusal to check and sign pay orders/DDs signing the same only under persuasion and interference amounting to wilful slowing down of work, shouting at branch Manager refusing to check and sign MR 2 statement and not discharging his duties as per job allocation, thereby disobeying lawful and reasonable instructions of the official superiors and conducting himself in disorderly and indecent behavior which is gross misconduct under sub-clause (e), (c) (d) (g) of Clause 19.5 Chapter XIX of Bipartite Settlement and he was issued with chargesheet dated 23-5-2002. Since the explanation given by the concerned employee was not satisfactory, the Respondent/Bank initiated departmental enquiry. The documents relied on by the Respondent/Management were made available to the concerned workman and since the concerned employee did not specify the relevancy of documents requested by him, he was advised to specify the same in respect of charges levelled against him. The Enquiry Officer after conducting enquiry has submitted his report wherein, he held out of 8 charges, charge Nos. 2, 6, 7 & 8 are proved and charges Nos. 1, 3, 4 & 5 are not proved. After the submission made by the concerned employee, the Disciplinary Authority after careful consideration of entire records, evidence passed an order on 30-12-2002 proposing to impose punishment and it was also communicated to the concerned employee. The Disciplinary Authority declined personal hearing to the concerned employee because he did not find it necessary to give him a personal hearing. The appeal filed by the concerned employee was also rightly rejected by the Appellate Authority. The Disciplinary Authority only after giving and affording a reasonable opportunity and in strict compliance with principles of natural justice and in accordance with provisions of Bipartite Settlement has come to the conclusion that charges framed against the concerned employee were proved. An in depth investigation was conducted into matter and since *prima facie* case seems to

be in existence, the concerned workman was issued with charge sheet dated 23-5-2002. Therefore, it is false to allege that it is a wrongful, illegal and unjust punishment imposed by the Respondent/Management against the concerned employee. Since the concerned employee was not specific as to the documents required by him to submit his statement of defence his request was rejected and his request for documents would be contrary to practice and therefore, Respondent/Management has every right to reject his request. Since the concerned employee has submitted statement of defence on 26-6-02 no prejudice was caused to the concerned employee and hence, the Enquiry Officer has rightly declined his request. In his representation, the concerned employee did not indicate specifically the details of documents required for his defence and since the concerned employee did not mention the relevancy of the said documents, the Enquiry Officer had turned down his request as bank documents are confidential in nature. Therefore, the allegation that Respondent/Management denied permission to have access with documents is incorrect and not valid. The Enquiry Officer based on the records and oral evidences has come to a conclusion that the some of the charges have been proved against the Petitioner. Sri Jayakar Shetty, then Deputy General Manager (IRD) who was designated as Disciplinary Authority for award staff and officers upto Scale III was promoted as General Manager (Per) and consequent to his promotion, Sri J. Pandiyan was posted as Deputy General Manager (IRD) and designated as Disciplinary Authority and a circular was issued among the staff. As such, the allegation that the change of Disciplinary Authority has not been intimated to concerned workman is not true. The Disciplinary Authority after a careful consideration and also the submission made by concerned workman has proposed to impose the punishment. No doubt, concerned employee has requested for personal hearing. Since sufficient opportunity was provided to concerned workman to have his say on the proposed punishment which was dealt with in detail by the Disciplinary Authority, he has observed that there is no need to give personal hearing and accordingly, he proceeded to pass final order. No doubt, Mr. Jayakar Shetty was promoted as General Manager (Per), however, the final order imposing the punishment was passed by Sri J. Pandiyan, Deputy General Manager, Disciplinary Authority and therefore, the appellate order passed by Mr. Jayakar Shetty designated as Appellate Authority is not in any way caused prejudice to the concerned employee by the appeal being disposed of by the same person, who had issued charge sheet in his capacity as Disciplinary Authority at the relevant point of time. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. As against this, the Petitioner filed a rejoinder wherein it is contended that no investigation report copy was given to the concerned employee and therefore, the

contention that *prima facie* case existed against the concerned employee after an indepth investigation is not correct. Further, denying the concerned employee to look into the documents was a denial of reasonable opportunity to the concerned employee, which clearly proves the prejudice against the concerned employee on the part of the Respondent/Bank and their intention to punish him at all costs. Further, the person who has denied the concerned employee's request for seeing the documents and also the person who has framed the charge is Mr. Jayakar Shetty, DGM. Therefore, he should not be acted as appellate judge, since it is a clear violation of principles of natural justice, which prejudice caused to the concerned employee. Further, the Disciplinary Authority and also Enquiry Officer have demanded the concerned employee to mention relevancy of documents sought for, but it is not necessary to mention the relevancy of documents prior to enquiry proceedings for obvious reasons and even during the course of enquiry proceedings, when relevancy was brought out before the Enquiry Officer, a valid and important document was denied to concerned employee to mark it as a defence exhibit. They have not looked into the relevancy viewed from the point of view of workman and they have viewed from the point of view of prosecution. Further, the Disciplinary Authority has rejected the personal hearing even though the concerned employee has requested the same, which is against the provisions of para 12(a) of settlement dated 10-4-2002. Therefore, the punishment is vitiated in the absence of personal hearing. Hence, the Petitioner Union prays that an award may be passed in their favour.

6. In these circumstances, the points for my determination are—

(i) "Whether the action of Respondent/Bank in imposing the punishment of reduction to lower stage in the scale of pay by two stages for a period of one year with cumulative effect on Sri V. R. Meyyappan is legal and justified?

(ii) "To what relief concerned employee is entitled?"

Point No. 1 :—

7. At the first instance, this Tribunal has come to the conclusion that the domestic enquiry held by the Respondent/Management against the concerned employee is not just and proper and therefore, the Respondent/Management was directed to adduce evidence before this Tribunal afresh. After this order, the Respondent/Management has examined three witnesses namely MW1 to MW 3 and marked the same documents as Ex. M 1 to M 9. On the side of the Petitioner, the concerned employee was examined as WW1 and 37 documents were marked as Ex. W1 to W37.

8. Therefore, at this stage, the point for my determination is—

"Whether the Respondent/Management has established the charges framed against the Petitioner before this Tribunal or not ?"

9. Representative appearing for the Respondent/Management has stated that though the management has initiated disciplinary proceedings against the concerned employee for the 8 charges, in view of the fact subsequent to the departmental enquiry held against the employee, charge Nos. 1, 3, 4 and 5 were held as not proved and hence, the Respondent/Management would like to press the remaining charges alone Charge Nos. 2, 6, 7 and 8. Charge No. 2 framed against the concerned employee is that he was entrusted with supervisory duties w.e.f. 1-8-2001 as per the job allocation sheet dated 1-8-2001 and although he had accepted the job allocation sheet after several discussions, he issued a letter to the Branch Manager on 13-9-2001 requesting an official order in writing by Branch Manager to check up/allow operations in the expired credit limits referred to in the said letter. Since at that time internal inspection was conducted by inspecting officials, the Branch Manager has requested the Petitioner to meet him in the evening to deliver the letter, but the concerned employee insisted the Manager to accept the letter and also insisted him to give reply immediately and he shouted at the Branch Manager creating an awkward situation forcing the Manager to accept the letter then and there itself. Again, the next day, he went to the Branch Manager's cabin and demanded an immediate reply to his letter and when Branch Manager told that he will reply shortly; he shouted at him in the presence of inspecting officials creating an awkward situation. In order to establish this charge against the concerned employee, the Respondent/Management examined MW2 one Mr. S. Marimuthu, Branch Manager at the relevant time and he deposed that the concerned employee who was entrusted with the officiating duties of second line officer in terms of internal circular No. 84/93 of the Respondent/Bank, which is included in Ex. M 3 series in page 3. The officiating duties and supervisory duties are entrusted to the concerned employee and the duties of special assistant hitherto discharged by the employee was entrusted to another employee R. Santha Krishnan w.e.f. 1-9-2001. The reason behind the entrusting of officiating duties with the employee was that he was the seniormost clerical cadre employee at the branch, during the relevant point of time, no officer other than the Branch Manager namely MW2 was posted in that branch, hence by virtue of experience and seniority the said work was entrusted to the concerned employee. Under such circumstances, the concerned employee's conduct was nothing but a disorderly behaviour wherein he shouted at the Branch Manager and he also insisted that he should accept his letter and should give a reply. He once again went to the MW2's chamber and asked him for written reply to his letter. Though the entire office was busy in attending

internal inspection duty, which was an important job, the concerned employee was not in a mood to listen to the same. The conduct of the concerned employee in this regard was also vouched by the evidence of MW1 and MW3 namely who are the inspecting officials, who were present during the relevant point of time. Thus, it is clearly established the rude behaviour of the concerned employee and the charge has been proved against the concerned employee.

10. But, as against this, the representative for the Petitioner contended that though it is alleged that the employee had shouted at the Branch Manager in front of the inspecting officials on 13-9-2001 and again shouting at him on 14-9-2001, it was not established before this Tribunal with any satisfactory evidence except the interested testimony of MW2, the Branch Manager. None of the inspecting officials namely Sri S. Vijaya Kumar and Sri Krishna Thunga who were examined as MW1 and MW3 had subscribed to the view of the Branch Manager, who is the prime complainant against the concerned workman. Under such circumstances, it cannot be said that the said charge framed against the concerned employee has been proved. Though the Disciplinary Authority held that this charge has been partly proved and imposed the punishment of censure, in this case, before this Tribunal, no satisfactory evidence was forthcoming and therefore, it cannot be said that the charge has been proved.

11. No doubt, I find some force in the contention of the representative for the Petitioner. But, it is admitted that during the relevant period namely 13-9-01 internal inspection was conducted and internal inspectors namely MW1 and MW3 were inspecting the Karaikudi Branch and it is also admitted that on 13-9-2001, the concerned employee has given a letter to the Branch Manager and it is also admitted that he wanted a reply immediately. No doubt, the internal inspecting authorities have not stated anything about the incident, but they have given the evidence with regard to the sixth charge, which was happened prior to this date namely 10-9-2001. Therefore, the management has not elicited anything about this incident which was alleged to have been taken place on 13-9-2001. Any how, there is nothing to dispute the claim of the MW2 namely the Branch Manager. Only because he was the complainant, it cannot be said that the complaint should be rejected in toto. Under such circumstances, I find the findings given by the Disciplinary Authority in this regard has to be accepted.

12. With regard to charge No. 6, it is alleged that in respect of transaction in expired credit limits, the Branch Manager had given specific instructions to the concerned employee to refer the cheques through cheque referred register, so that he can pass necessary orders in the said register either to pass or return the cheques. However, on 10-9-2001 two cheques were presented in the counter in expired credit limit No. CC 7/99 of Mr. Rajasekar who is an engineer doing civil construction work and the concerned

employee sent the cheques and ledger to the Branch Manager contrary to the advise of the Branch Manager. The Branch Manager then advised him to refer the cheques through cheque referred register for an instruction to pass the cheque, but the concerned employee did not do so and shouted at the Manager that he will not obey his instructions. The inspecting official, Mr. P.K. Thunga who was present at that time advised the concerned employee that the instructions of the Branch Manager in that connection is very clear and proper and then only the concerned employee wrote that 'expired credit limit' above the initials of Branch Manager in the cheque. The representative of the management argued that MW2 namely the Branch Manager by referring the page 29 of Ex. M3 series deposed that cheque for Rs. 6000 is one of them and page 32 is the copy of the relative account which shows the two debit entries namely one for Rs. 5000 and other for Rs. 6000 on 10-9-2001. He had already given instruction to the concerned employee to refer the cheques through cheque referred register, so that he can pass necessary orders in the said register either to pass or return the cheques. Despite the clear instructions, the concerned employee on 10-9-2001 sent the two cheques alongwith the ledger without entering the same in cheque referred register. Even when the Branch Manager reminded him of his earlier instruction, he did not listen to the same but started shouting at him, which is an act of disobedience exhibited by the concerned employee in failing to adhere to the lawful and reasonable instructions of his official superior. MW1 and MW3 who are inspecting authorities have also corroborated this evidence and they have also stated that they had to intervene and advise the employee to obey the instructions of MW2 and after which the concerned employee referred the cheques to MW2 in cheque referred register. He further argued that no doubt, the Petitioner union attempted to inform this Tribunal that no operation can be allowed in expired credit limits and as such, the concerned employee was correct in his representation. In the cross examination, the concerned employee who was examined as WW1 has stated that he was not even aware who is the sanctioning authority for such expired credit limits and though the guidelines of the Respondent/Bank insist that no operation should be allowed in expired credit limits, in the instant case, the subject credit limit could not be renewed due to non-availability of certain vital papers and the MW2 being the sanctioning authority he had advised the employee to refer the cheques to him through cheque referred register for passing necessary orders. Since the sanctioning authority himself issued such an instruction, the concerned employee is relieved of his accountability and there was no reason for him to have any apprehension over the matter. The issue on hand in this regard is not one of whether the operations can be allowed in expired credit limit or not which the Petitioner was harping on, but the conduct of the concerned employee in having not obeyed the instruction of his official superior. By putting his initial, the branch

head takes the sole responsibility for passing the cheques. The concerned employee is discharging of accountability when the cheques are passed under the orders of branch head. In this case, it is established that when the cheques were presented for payment on 10-9-2001 in expired credit limits of Mr. Rajasekar, there was no reason for the concerned employee to have any doubt except to refer the said cheques to MW2 through cheque referred register, which was also the standing instructions given to him by MW2. But, on the other hand, without sending the cheques along with cheque referred register, the concerned employee inserted the cheques in the ledger and also by shouting at MW2 that he will not pass the cheques, thus, the concerned employee has clearly disobeyed the orders of official superior which was also established before this Tribunal.

13. But on the other hand, on behalf of the Petitioner it is argued that it is alleged that the action of sending two cheques presented at the counter in the expired credit limit of Mr. Rajasekar and the ledger to the Branch Manager, but it is only a fabricated charge. MW3 namely Mr. P.K. Thunga, who was the inspecting official who alleged to have been present at the time of alleged incident had stated in the domestic enquiry that he could not recollect the incident relating to the incident on 10-9-2001. Even in his written statement, he has categorically stated that he could not recollect the particular incidents. Even before this Tribunal, he has given the evidence in general nature stating that cheques were sent to the Branch Manager without referring the same in cheque referred register. Further, the another inspecting official Mr. S. Vijayakumar MW1 stated that the incident took place on 10-9-2001 and it had happened at 12 noon of the said day. But in cross examination, he has stated that he does not remember at what time clearing cheque was presented and he does not know the clearing timing. Thus, he has taken different position that one was cash cheque and another was clearing instrument. On the other hand, MW2 has stated that the two cheques were sent simultaneously after the receipt of clearing cheques, which normally comes at around 1.30 pm. Thus, there is a contradiction in the testimony of MW1 to MW3. Hence, the entire issue is false and fabricated while the deposition of MW1 Mr. Vijayakumar could not be trusted and deposition of MW2 is one sided as he was the main complainant in the whole episode, hence, the charge framed against the concerned employee is a false one.

14. But, I find much force in the arguments of representative for the Respondent, because it is clear that the Branch Manager MW2 has given instruction in such case, the cheque should be sent alongwith cheque referred register. On that date, it is admitted that the concerned employee sent the two cheques alongwith ledger and after the intervention of inspecting official, he has obeyed the instruction of Branch Manager and sent the cheques along with cheque referred register and it is admitted that there

was an argument between the concerned employee and the Branch Manager and only on their instructions, the concerned employee obeyed the orders. Under such circumstances, I find the concerned employee has clearly disobeyed the official superior namely MW2 and hence, I find this charge is also proved against the concerned employee.

15. Charge No. 7 is though the concerned employee had been entrusted with department work as per job allocation sheet, he was not in the habit of signing the ledgers, vouchers, slips in spite of Branch Manager's instruction nor put his signature or initial in cashier scroll for having checked the cash and in transfer scroll and also not putting his initial on the 'pay cash' seal in DD cancellation payment vouchers, conveyance general charges and any expenditure vouchers, which amounts to a misconduct. In order to prove this charge MW2 namely Branch Manager was examined and he deposed that pages 33 to 46 of M2 series, it is stated that the employee was officiating in the place of second line officer, all vouchers passed in the branch especially expenditure vouchers are required to be signed jointly by him as well as by the Branch Manager. But, MW2 has clearly deposed that the concerned employee was never in the habit of putting his initial in any of the expenditure voucher and was also deliberately putting 'pay cash' seal on the initial of Branch Manager. A perusal of the document clearly establishes that in none of the document, the concerned employee had signed. Even in the cross examination, he has not given any excuse for his conduct. Thus, his failure to discharge his officiating duties has been proved and this charge has also been established before this Tribunal.

16. On behalf of the Petitioner, it is contended that no doubt, in few vouchers, the concerned employee has not signed, but it did not prove that he was not in the habit of signing the instruments at all including expenditure vouchers. Due to pressure of work, there may be a chance of missing a few instruments on a day-to-day basis from signing the vouchers. However, it does not mean that the workman did not follow the rules of business.

17. But, I find there is no substance in the argument put forth on behalf of the Petitioner. Since it is a banking business, since the Branch Manager has signed all the vouchers especially the expenditure vouchers, it is clearly established before this Tribunal that the concerned employee has not signed the vouchers and he wanted to absolve from his liability by not putting his initial in the vouchers. Therefore, I find that this charge framed against the concerned employee is also proved by the Respondent/Management.

18. The last charge namely charge No. 8 is that the concerned employee was allotted the job of preparing the checking of all statement w.e.f. 1-2-2002 as per job rotation for the period from 1-2-02 to 31-07-2002. He was also one of the joint key holders and entrusted with officiating work/

duties and therefore, he has to prepared MR-2 certificate and on 6-2-2002 he prepared and sent MR-2 certificate to Branch Manager without checking and signing at the appropriate place and when the Branch Manager instructed him to check and sign the certificate and send the same for his signature and for onward transmission to Regional Office, he refused to check and sign the same as per the instructions of Branch Manager and was issued with a charge memo dated 7-2-2002 with instruction to check and sign MR-2 certificate. The concerned employee requested the Branch Manager to return the MR-2 certificate and while re-submitting the MR-2 certificate he put anti-date as 6-2-2002 after initialling the same at the bottom of the first page and writing on the top of his initial "accounts are tallied", thus, he has disobeyed the orders of superiors.

19. For this MW 2 who deposed with regard to this charge that the document numbered 49, which is under Ex. M 3 series, was MR-2 statement prepared at the branch in which the concerned employee failed to sign at the initial stage and only because he was issued with charge memo dated 7-2-2002 which is under serial No. 51 of Ex. M3 series. Subsequently, the concerned employee put his initial at the first page of statement by recording "all accounts tallied" and deliberately anti-dated it as 6-2-2002 to make it appear that as if he had initialled even at the date of preparation of the said statement. Though the concerned employee has denied that he had initialled only after the issue of memo dated 7-2-2002, he has not stated in the cross examination for what reason the memo was given to him. He has not given any satisfactory explanation for having prepared MR-2 certificate for the second time on 25-2-2002 namely under serial No. 56 of Ex. M3 series. So this charge is also clearly proved by Respondent/Management.

20. But, as against this, the representative for the Petitioner argued that there is no wilful insubordination and charge No. 8 was instituted against the concerned employee on the wrong premises that MR-2 certificate should be signed by the officiating special assistant as Assistant Branch Manager. Therefore, the important question in such circumstances is 'whether such an action amounts to insubordination and disobedience' and this should be seen in the background of the extant guidelines as contained in bank's codified circular No. 84/93 in page 10 of Ex. M3 which states that 'special assistant cannot discharge all the duties of an officer, but an officer will be discharging certain duties and powers of the special assistant in addition to certain other supervisory duties. When an officer goes on leave, such of the part of duties and powers of special assistant hitherto carried out by that officer can be entrusted to seniormost clerk after taking prior permission from the Regional Office. Such of those duties and powers which cannot be discharged by special assistant but only by an officer will have to be entrusted to another officer/Branch Manager, as the case may be.'

Therefore, in terms of the guidelines of the Respondent/Bank the workman including a special assistant is not treated as an officer and he is only treated as an award staff. The guidelines as contained in bank's circular No. 75/94 which is marked as Ex. W30 clearly states that MR-2 certificate has to be invariably signed by Assistant Branch Manager and the concerned Branch Manager only and admittedly, in this case, the concerned employee does not fit into both above cadres. Further letter dated 19-2-2002 in page No. 58 of Ex. M4 brought out in the enquiry throws more light on the question of signing the MR-2 as—"we advise that the subject certificate should invariably be signed by Assistant Branch Manager. In his absence, it should be signed by the officer who officiates in his place." Therefore, in terms of the guidelines, the officer alone officiating in the place of Assistant Branch Manager is empowered to sign MR-2. It is admitted that the concerned employee was not designated as Assistant Branch Manager. Therefore, the objection raised by the concerned employee cannot be termed as disobedience or insubordination. Further, it is argued on behalf of the Petitioner that in the case of BURN & CO. Vs. WORKMEN Reported in 1959 AIR 529 SC, the Supreme Court has held that when an employee who is not accustomed to a particular kind of new work entrusted to him, refuses to do that work out of fear of doing the work wrongly and not out of desire to wilfully disobey the orders issued to him by his superior, the misconduct of wilful disobedience does not lie against him. Under such circumstances, this charge has not been proved by the Respondent/Management.

21. Though I find some force in the contention of the representative for the Petitioner, in this case, it is established that the concerned employee not only disobey the orders of superior but also by putting an anti-date along with his signature for which he has not given any explanation for what reason, a memo was issued to him in this regard. If really, he has put his initial on 6-2-2002 itself, there is no necessity for issuing memo by MW2. Under such circumstances, I find the concerned employee has given a false evidence and he has disobeyed the orders of his superiors wantonly. Thus, I find this charge also is proved by the Respondent/Management.

22. The representative for the Petitioner has also argued that even after the enquiry before this Tribunal, no reasonable opportunity was given to him and no document was produced as required by the concerned employee. But, I find the Petitioner has filed a petition for production of documents and this Tribunal has ordered to produce certain documents by the Respondent/Management and it was also produced. Under such circumstances, I am not inclined to accept the contention of the Petitioner that reasonable opportunity was not given to the concerned employee.

23. Then again, it was argued on behalf of the Petitioner that the 2nd show-cause notice proposed the

punishment stated to be running concurrently i.e. in all the punishment of reduction to lower stage in the scale of pay by two stages for a period of one year with cumulative effect is proposed to be imposed on him. But, in the final order, the Disciplinary Authority while imposing the punishment has stated that consequent upon the imposition of punishment the basic pay of Sri V. R. Meyyappan, the concerned employee excluding stagnation increments is reduced from Rs. 8980 to Rs. 7920 with immediate effect. Any increment falling due during the currency of punishment shall not be released. It is further argued on behalf of the Petitioner that the above punishment is totally a different and higher quantum of punishment than what has been proposed in 2nd show cause-notice, which is a gross violation of principles of natural justice. In terms of Memorandum of Settlement dated 10-4-2002, which is marked as Ex. M7 in pages 12 & 13, it is mentioned that the punishment that could be imposed on the workman have been codified. In the aforesaid codified set of punishments that could be imposed on a workman for major misconduct, the punishment of 'reduction to a lower stage with cumulative effect' does not find place. Therefore, this is yet another violation of principles of natural justice as the punishment of higher quantum and magnitude has been imposed on the concerned workman than what could be imposed on him. Further, it is also stated that the punishment should not be given more than one punishment in respect of anyone charge. Further, in this case, reduction to a lower scale by two stages in scale of pay with cumulative effect at the time of imposition of punishment, it has been spelt out that the workman would not be eligible for release of any increment falling during the currency of the punishment. Therefore, it is a total violation of principles of natural justice and it is liable to be set aside.

24. On the other hand, on behalf of the Respondent it is argued that it is well settled position that different punishment can be given for different charges. The punishment imposed by the Disciplinary Authority is a cumulative punishment for charge No. 6 & 8. Therefore the implication of the same very well as is evident from the statement contained in reply dated 14-1-2003 by the concerned employee that the Disciplinary Authority has proposed to impose the cumulative punishment having concurrent effect namely the punishment of reduction to a lower stage in the scale of pay by two stages for a period of one year. Therefore, the punishment imposed on him cannot be termed as double punishment.

25. I find much force in the contention of the representative for the Respondent. Therefore, I find there is no substance in the contention of the representative for the Petitioner in this regard. As such, I find this point that the action of the Respondent/Bank in imposing the punishment of reduction to a lower stage in the scale of pay by two stages for a period of one year with cumulative effect on the concerned employee is legal and justified.

Point No. 2 :

The next point to be decided in this case is to what relief the concerned employee is entitled ?

26. In view of my foregoing findings, I find the concerned employee is not entitled to any relief as prayed for by the Petitioner union.

27. Thus, the reference is answered accordingly.

(Dictated to the P. A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd May, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the I Party/Claimant : WW 1 Sri V. R.
Meyyappan

For the II Party/Management : MW 1 Sri S. Vijayakumar
MW 2 Sri S. Marimuthu
MW 3 Sri P. Krishna
Thunga

Documents Marked :—**For the I Party/Claimant :—**

Ex. No.	Date	Description
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W1	06-11-86	Xerox copy of the circular issued, by Respondent/Bank
W2	23-05-02	Xerox copy of the charge sheet issued to concerned Workman
W3	01-06-02	Xerox copy of the letter from concerned employee to Disciplinary Authority
W4	07-06-02	Xerox copy of the letter from Disciplinary Authority to concerned workman
W5	18-06-02	Xerox copy of the letter from concerned employee to Disciplinary Authority
W6	26-06-02	Xerox copy of the letter from Concerned employee to Disciplinary Authority
W7	22-06-02	Xerox copy of the letter from Disciplinary Authority to Concerned workman
W8	09-07-02	Xerox copy of the letter from concerned employee to Branch Manager
W9	10-07-02	Xerox copy of the letter from Branch Manager to Concerned employee
W10	12-07-02	Xerox copy of the letter from Branch Manager to Concerned employee
W11	17-07-02	Xerox copy of the letter from Enquiry Officer to Concerned employee
W12	20-07-02	Xerox copy of the letter from concerned workman to Disciplinary Authority
W13	24-07-02	Xerox copy of the letter from Disciplinary Authority to Concerned employee
W14	24-07-02	Xerox copy of the enquiry notice
W15	02-08-02	Xerox copy of the letter from concerned employee to Enquiry Officer

W16	05-08-02	Xerox copy of the enquiry notice
W17	15-08-02	Xerox copy of the letter from concerned workman to Enquiry Officer
W18		Xerox copy of the enquiry proceedings
W19	05-09-02	Xerox copy of written brief of Presenting Officer
W20	14-09-02	Xerox copy of letter from Enquiry Officer to defence Representative
W21	04-10-02	Xerox copy of the written brief of defence Representative
W22	16-11-02	Xerox copy of the letter from Disciplinary Authority Enclosing enquiry findings
W23	25-10-02	Xerox copy of the enquiry proceedings
W24	09-12-02	Xerox copy of the representation given by concerned employee to Disciplinary Authority
W25	30-12-03	Xerox copy of the 2nd show-cause notice issue to Petitioner
W26	14-01-03	Xerox copy of the reply given by the concerned Employee to Disciplinary Authority
W27	28-01-03	Xerox copy of the final order passed by Disciplinary Authority
W28	12-03-03	Xerox copy of the appeal preferred by concerned Employee
W29	10-06-03	Xerox copy of the order of Appellate Authority
W30	09-04-94	Xerox copy of the circular of Respondent/Bank
W31	Nil	Extract of hand delivery book of Karaikudi branch
W32	11-02-02	Xerox copy of the letter from Regional Office of Respondent/Bank to concerned workman
W33	21-02-02	Xerox copy of the reply given by concerned employee to Regional Office's letter
W34	12-02-02	Xerox copy of the letter from Regional Office to Karaikudi branch
W35	19-02-02	Xerox copy of the letter from Regional Office to Karaikudi branch
W36	04-11-97	Xerox copy of the circular 204/97 issued by Respondent
W37	02-09-98	Xerox copy of the circular No. 191/98 issued by Respondent/Bank

For the Respondent/Management :—

Ex. No.	Date	Description
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M1	02-07-02	Xerox copy of the letter of Respondent / Bank Appointing Enquiry Officer
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M2	02-07-02	Xerox copy of the order of Respondent/Bank Appointing Presenting Officer
M3	Nil	Xerox copy of the management exhibits Mex 1 to Mex 30
M4	Nil	Xerox copy of the defence exhibits Dex 2
M5	Nil	Xerox copy of the letter submitted by concerned employee to Disciplinary Authority
M6	28-11-02	Xerox copy of the letter from Respondent/Bank to Concerned employee
M7	10-04-02	Xerox copy of the memorandum of settlement on Disciplinary action procedure
M8	16-05-01	Xerox copy of the special circular issued by Chairman
M9	Nil	Extract of attendance register.

नई दिल्ली, 29 जून, 2007

का. आ. 2002.—जबकि मैसर्स सीमेन्स इन्फोर्मेशन सिस्टम्स लिमिटेड, दिल्ली (दक्षिण) क्षेत्र में (कोड संख्या डीएल/15046 के तहत) (इसके पश्चात् प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम, उक्त अधिनियम की धारा 6 में विनिर्दिष्ट की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी, उक्त अधिनियम के अंतर्गत अथवा इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात् स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे अन्य भविष्य निधि लाभों का भी फायदा उठा रहे हैं।

3. अतः, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और समय-समय पर इस संबंध में उल्लिखित शर्तों के अध्यधीन केन्द्र सरकार एतद्वारा उक्त प्रतिष्ठान को 1-7-1993 से अगली अधिसूचना तक उक्त स्कीम के सभी उपबंधों के प्रचालन से छूट प्रदान करती है।

[संख्या एस-35015/19/2007-एस.एस.-II]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 29th June, 2007

S.O. 2002.—Whereas M/s. Siemens Information Systems Ltd., [under Code No. DL/15046 in Delhi (South) region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of

Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 1-7-1993, until further notification.

[No. S-35015/19/2007-SS-II]

S.D. XAVIER, Under Secy.

नई दिल्ली, 5 जुलाई, 2007

का.आ. 2003.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 138 दिनांक 4-1-2007 द्वारा सिक्युरिटी पेपर मिल, होशांगाबाद जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 21 में शामिल है को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 7-1-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 7-7-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. संख्या एस-11017/16/97-आई.आर(पी.एल.)]

गुरजोत कौर, संयुक्त सचिव

New Delhi, the 5th July, 2007

S. O. 2003.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 138

dated 4-1-2007 the service in the Security Paper Mill, Hoshangabad which is covered by item 21 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months from the 7th January, 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act, for a period of six months from the 7th July, 2007.

[File No. S-11017/16/97-IR (PL)]

GURJOT KAUR, Jt. Secy.